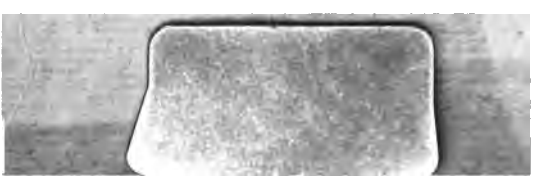
Earl of Annesley.



CASES

IN

LAW

AND

EQUITY,

WITH THE

OPINIONS

OF

EMINENT COUNSEL

THEREON.

Selected from the Papers of a BARRISTER at LAW, lately deceaſed.

LONDON:

Printed by W. STRAHAN and M. WOODFALL, Law-Printers to the King's Moſt Excellent Majeſty:

For G. KEARSLY, No. 46. near Serjeant's Inn, Fleet-Street.

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THE Utility of this Collection of Caſes, (which contain the Opinions of ſome of the firſt Authorities in the Kingdom on Points of LAW and EQUITY) is too apparent to make it neceſſary for the Editor to ſay much thereon; any Gentleman in a Practical Branch of the Law, will here find ſuch a Variety of Matters of Law, explained and determined, as will not only aſſiſt his Judgment, but alſo aid his Practice, ſo as to make it in ſome degree unneceſſary for him to have the further Opinion of Counſel in almoſt any Caſe that can poſſibly occur.

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Temple,
June 1, 1776.

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Caſes in Law and Equity,

WITH THE

Opinions of Eminent Council thereon.

CASE.

4th *April*, 1720. THE Dean and Chapter of *Weſtminſter*, by two ſeveral leaſes demiſed ſeveral meſſuages in *Newgate-ſtreet*, to *S. G.* widow, for the term of forty years, in truſt for *J. D.* and *Elizabeth* his wife.

5th *April*, 1720.—By indenture tripartite between the ſaid *J. D.* and *Elizabeth* his wife of the firſt part, the ſaid *S. G.* of the ſecond part, and *S. S.* of the third part; the ſaid *J. D.* and *Elizabeth* his wife, and the ſaid *S. G.* in conſideration of 1000 *l.* paid by *S. S.* to *J. D.* and his wife, demiſed the ſaid premiſes to the ſaid *S. S.* for the term of 39 years and 3 quarters of a year, at a pepper corn rent, ſubject to redemption upon payment of the ſaid 1000 *l.* and intereſt on the 19th of *June* then next enſuing.

28th *April*, 1720.—The Dean and Chapter of St. Paul demiſed by leaſe to the ſaid *S. G.* in truſt for the ſaid *J. D.* and *Elizabeth* his wife, ſeveral meſſuages lying in *Newgate-market*, and *Warwick-lane*, for forty years.

The ſaid 1000 *l.* not being paid upon the firſt mortgage, and ſome intereſt remaining due thereon; *J. D.* applied to *S. S.* to advance him the further ſum of 400 *l.* his wife *E. D.* being then dead.

15th *September*, 1725.—By indenture between the ſaid *J. D.* of the firſt part, *S. G.* of the ſecond part, and the ſaid *S. S.* and *T. B.* of the third part, in conſideration of 400 *l.* paid to the ſaid *J. D.* by the ſaid *S. S.* and 5 *s.* by him paid to the ſaid *S. G.* ſhe the ſaid *S. G.* by the direction and appointment of the ſaid *J. D.* and alſo the ſaid *J. D.* aſſigned the ſaid meſſuages and premiſes, held of the Dean and Chapter of St. *Paul* in *London*, to the ſaid *S. S.* for the reſidue of the ſaid term of 40 years, from Michaelmas, 1719, by the ſaid leaſe of the 20th *April*, 1720, granted, and in conſideration of the ſaid ſum of 400 *l.* and of the ſaid 1000 *l.* and intereſt then due to the ſaid *S. S.* and of 5 *s.* to the ſaid *S. G.* paid by the ſaid *T. B.* the ſaid *S. G.* and alſo the ſaid *J. D.* aſſigned by the nomination and appointment of the ſaid *S. S.* unto the ſaid *T. B.* the ſeveral meſſuages and hereditaments,

ments, held of the ſaid Dean and Chapter of *Weſtminſter*, for the reſidue of the two ſeveral terms of 40 years, each commencing at Michaelmas 1719, by the ſaid two ſeveral leaſes, granted to the ſaid *S. G.* by the Dean and Chapter of *Weſtminſter*, in truſt for the ſaid *S. S.* ſubject to the proviſoe therein contained; whereby it was agreed that if the ſaid *J. D.* ſhould pay unto the ſaid *S. S.* as well the ſaid ſum of 400 *l.* with intereſt at 5 *per cent. per annum*; as alſo the ſaid ſum of 1000 *l.* with ſuch intereſt as was then, or ſhould become due for the ſame, on the 15th of *March* then next; then the ſaid *S. S.* and *T. B.* ſhould aſſign unto the ſaid *J. D.* all the premiſes thereby aſſigned to the ſaid *S. S.* and *T. B.* or by the ſaid indenture tripartite demiſed to *S. S.*

The ſaid *J. D.* afterwards died inteſtate, and 30th of *July*, 1729, adminiſtration was granted to his daughter *A. B—n*, wife of *J. B—n*, who thereby became intitled to the equity of redemption, of the ſaid mortgaged premiſes.

The ſaid *S. S.* died inteſtate, and adminiſtration was granted to *J. B—d*, and the ſaid *T. B—d*, and *E. S.* his widow, who by virtue thereof, became intitled to the ſaid monies due on the ſaid mortgages.

7th *December*, 1731.—The ſaid *J. B—n*, and *Ann* his wife, having an opportunity to renew the ſaid two leaſes with the Dean and Chapter of *Weſtminſter*, did for that purpoſe apply to the ſaid *J. B—d*, *T. B—d*, and *E. S.* to ſurrender the ſaid two leaſes, and to advance out of the eſtate of the ſaid *S. S.* 100 *l.* to defray the fine and other expences of ſuch renewal, and agreed that the ſaid new leaſes ſhould be in the name of *S. W.* in truſt for ſecuring the money due, and to become due on the ſaid mortgages, and alſo the ſaid 100 *l.* with intereſt; and that the ſaid meſſuages and premiſes held of the Dean and Chapter of St. *Paul*, ſhould alſo be a ſecurity for the money due on the ſaid mortgages, and the ſaid 100 *l.* to be advanced, and upon thoſe terms, the ſaid *J. B—d*, *T. B—d*, and *E. S.* ſurrendered, or delivered up the ſaid two old leaſes that had been granted by the Dean and Chapter of *Weſtminſter*, to the ſaid *S. G.* and advanced to the ſaid *J. B—n*, and *Ann* his wife, the ſaid 100 *l.* which was expended in payment of the fine and other charges or expences upon renewing of the two leaſes. And thereupon the ſaid Dean and Chapter of *Weſtminſter*, by their indenture of leaſe, dated 7th *December*, 1731, did demiſe to the ſaid *S. W.* all that meſſuage or tenement therein mentioned to be ſituate in *Newgate-ſtreet*, *London*, and wherein *G. D.* a grocer then dwelt, for the term of forty years, from Michaelmas then laſt paſt.

7th *December*, 1731.—The ſaid Dean and Chapter of *Weſtminſter*, by one other indenture of leaſe, for the conſideration therein mentioned, did demiſe to the ſaid *S. W.* three ſeveral meſſuages, near *Newgate-market*, to hold for the term of forty years, from Michaelmas then laſt paſt.

The ſaid leaſes were ſo made to *S. W.* in truſt, and to the intent that the ſame might be aſſigned, to the ſaid *J. B—d*, *T. B—d*, and *E. S.* the adminiſtratrix of the ſaid *S. S.* or as they ſhould direct, for ſecuring the payment of the principal money and intereſt then due,

and

and to grow due upon the aforeſaid ſeveral mortgages made by the ſaid *J. D.* and *Elizabeth* his wife, and *S. G.* their truſtee, and the ſaid *J. D.* and *S. G.* to the ſaid *S. S.* and to the ſaid *T. B.* in truſt for the ſaid *S. S.*

18th *January*, 1731.—By indenture quadrupartite, made between the ſaid *J. B—n*, and *Ann* his wife, who was adminiſtratrix of the ſaid *J. D.* of the firſt part, the ſaid *S. W.* of the ſecond part, the ſaid *J. B—d*, *T. B—d*, and *E. S.* of the third part, and *T. B.* of the fourth part, reciting to the *effect before recited*, and that there then remained due of the monies ſecured by the ſaid indenture, of the 15th *September*, 1725, the ſum of 1155*l.* 8*s.* 2*d.* and for the principal and intereſt of the ſaid 100*l.* advanced for renewing the ſaid two leaſes, the ſum of 102*l.* 11*s.* 4*d.* amounting together to 1257*l.* 19*s.* 6*d.* and that two ninth parts thereof being 279*l.* 11*s.* 0*d.* did belong to the ſaid *J. B—d*, four other ninth parts thereof being 559*l.* 2*s.* 0*d.* to the ſaid *T. B—d*, and the three remaining ninth parts thereof being 419*l.* 6*s.* 6*d.* did belong to the ſaid *E. S.* and it had been agreed, that as well the ſaid meſſuages and premiſes, held of the Dean and Chapter of *Weſtminſter*, as alſo the ſaid meſſuages and premiſes held of the ſaid Dean and Chapter of St. *Paul*, ſhould be aſſigned to the ſaid *T. B.* in truſt for ſecuring the payment of the ſaid monies. It is witneſſed, that in conſideration of the ſaid 1257*l.* 19*s.* 6*d.* ſo due from the ſaid *J. B—n*, and *Ann* his wife, and for the better ſecuring to the ſaid *J. B—d*, *T. B—d*, and *E. S.* the payment thereof in the proportions before mentioned, with intereſt, and of 5*s.* paid to *S. W.* *J. B—n*, and *Ann* his wife, by *T. B.* the ſaid *S. W.* in purſuance of the truſt repoſed in him, and at the requeſt, and by and with the conſent and direction of the *J. B—n*, and *Ann* his wife, and alſo the ſaid *J. B—n*, and *Ann* his wife, at the nomination and appointment of the ſaid *J. B—d*, *T. B—d*, and *E. S.* did aſſign to *T. B.* the ſaid four meſſuages and premiſes, by the ſaid two indentures of leaſe, of the 7th *December*, 1731, demiſed by the ſaid Dean and Chapter of *Weſtminſter*, to the ſaid *S. W.* for all the then remainder of the two ſeveral terms of 40 years, and 40 years, by the ſaid leaſes reſpectively granted, ſubject to the rents and covenants in the ſaid leaſes reſerved and contained, in truſt for the ſaid *J. B—d*, *T. B—d*, and *E. S.* And it was further witneſſed that for the conſiderations aforeſaid, and for the better ſecuring the payment of the ſeveral ſums of money before mentioned, with intereſt, to the ſaid *J. B—d*, *T. B—d*, and *E. S.* and alſo in conſideration of 5*s.* paid to the ſaid *J. B—n*, and *Ann* his wife, *J. B—d*, *T. B—d*, and *E. S.* by *T. B.* they the ſaid *J. B—n*, and *Ann* his wife, by the direction and appointment of the ſaid *J. B—d*, *T. B—d*, and *E. S.* and alſo the ſaid *J. B—d*, *T. B—d*, and *E. S.* did aſſign to the ſaid *T. B.* the four meſſuages, which were then held under, or by virtue of the ſaid leaſe of the 28th *April*, 1720, and made by the Dean and Chapter of St. *Paul*, in *London*, for all the remainder of the ſaid term of 40 years, by the ſaid leaſe granted to the ſaid *S. G.* ſubject to the rents and covenants in the ſaid leaſe contained, *in truſt* for the ſaid *J. B——d*, *T. B——d*, and *E. S.* their

executors, administrators, and assigns, under a proviso, that if the said *J. B—n*, and *Ann* his wife, should pay to the said *J. B—d*, 279 *l.* 11 *s.* 0 *d.* with interest, and to *T. B—d* 559 *l.* 2 *s.* 0 *d.* with interest, and to *E. S.* 419 *l.* 6 *s.* 6 *d.* with interest, on the 18th of *March* then next, then the said *T. B.* should assign the premises to the said *J. B.* and *Ann* his wife, or as *they* should direct.

J. B—n, and *Ann* his wife, did agree with the Dean and Chapter of St. *Paul*, for the renewing the said lease, dated the 28th *April*, 1720, made to *S. G.* and in order to enable the said Dean and Chapter to grant such new lease, they the said *J. B—d*, *T. B—d*, and *E. S.* and *J. B—n*, and *Ann* his wife, did surrender and yield up the said lease to the said Dean and Chaper of St. *Paul*.

22d *December*, 1732.—By indenture of lease, the Dean and Chapter of St. *Paul* did devise to *N. A.* the four messuages in *Warwick Lane* and *Newgate Market*, for the term of forty years from Michaelmas then last past, at the rent of five pounds *per annum*.

The last lease was granted to the said *N. A.* in trust for the said *J. B—d*, *T. B—d*, and *E. S.* for better securing to them the payment of the said several principal sums of money and interest.

The said *J. B—n* died in *March* 1733.

20th *June*, 1733.—By indenture sexpartite, made between the said *Ann B—n*, widow, only child and administratrix of the said *J. D.* deceased, and also administratrix of the said *J. B—n*, her late husband, deceased, of the first part, the said *S. W.* of the second, the said *N. A.* of the third, the said *J. B—d*, and *T. B—d*, and *E. S.* administrators of the said *S. S.* deceased, of the fourth, the said *T. B.* of the fifth, and *J. S.* Esq; of the sixth part, in consideration of 299 *l.* 16 *s.* 0 *s.* to the said *J. B—d*, and of 559 *l.* 12 *s.* 0 *d.* to the said *T. B—d*, and of 449 *l.* 13 *s.* 11 *d.* to the said *E. S.* respectively, paid by the said *J. S.* which payments were respectively made by the direction and appointment of the said *Ann B—n*, and in consequence of the further sum of 150 *l.* 17 *s.* 11 *d.* also paid by the said *J. S.* to the said *A. B—n*, which said sums of 299 *l.* 16 *s.* 0 *d.* 559 *l.* 12 *s.* 2 *d.* 449 *l.* 13 *s.* 11 *d.* and 150 *l.* 17 *s.* 11 *d.* make together 1500 *l.* and in consideration of 5 *s.* to *T. B.* and *S. W.* likewise paid by the said *J. S.* he the said *T. B.* at the request and by the direction and appointment as well of the said *J. B—d*, *T. B—d*, and *E. S.* as of the said *Ann B—n*, and *S. W.* and also they the said *J. B—d*, *T. B—d*, *E. S.* *Ann B—n*, and *S. W.* did assign to the said *J. S.* the said four messuages, or tenements and premises, in and by the said two recited indentures of lease of the 7th of *December*, 1731, demised by the Dean and Chapter of *Westminster* to the said *S. W.* to hold the said four messuages or tenements, and premises, for the remainder of the said two several terms of 40 years, and 40 years, by the said two leases of the 7th of *December* 1731, granted, subject to the payment of the several rents and performances of the covenants in the said two leases reserved.

It is further witnessed, that for the considerations aforesaid the said *N. A.* at the request and by the direction and appointment as well of the said *T. B. J. B—d*, *T. B—d*, and *E. S.* as of the said *Ann*

B—n,

B—n, and alſo they the ſaid *T. B. J. B—d, T. B—d, E. S.* and *Ann B—n*, did aſſign to the ſaid *J. S.* the ſaid four meſſuages or tenements and premiſes by the ſaid indenture of leaſe, dated 22d *December* laſt, demiſed by the ſaid Dean and Chapter of St. *Paul*, to the ſaid *N. A.* to hold the ſaid premiſes, with the appurtenances, unto the ſaid *J. S.* for the reſidue of the ſaid term of 40 years, in and by the ſaid leaſe, dated 22d *December* laſt, from the Dean and Chapter of St. *Paul*, to the ſaid *N. A.* granted and demiſed as aforeſaid, ſubject nevertheleſs to the payment of the rent and performance of the covenants therein reſerved, under a proviſo, that if the ſaid *Ann B—n* ſhould pay to *J. S.* the ſaid ſum of 1500 *l.* with intereſt, at 4 *l.* 10 *s.* 0 *d. per cent. per annum*, on the 30th of *June* next, the ſaid *J. S.* ſhould aſſign the premiſes to the ſaid *Ann B—n*, or as ſhe ſhould direct.

N. B. Mrs. *B—n* has ſince married *W. G.* and they are now ſued by *B—n*'s creditors, who pretend the ſaid leaſes are aſſets liable to their demands.

Query, Whether the premiſes, or any, and what part are ſubject in law or equity to the payment of the debts of the ſaid *J. B—n*?

Opinion, I conceive that if a huſband and wife are poſſeſſed of a leaſehold eſtate in right of the wife, the huſband has a power over it to diſpoſe of it; but if he makes no ſuch diſpoſition, it will go to the ſurvivor of them. And it appears by *Hob.* 3. that though the huſband purchaſes the fee-ſimple, the leaſe ſhall not be extinct thereby. I conceive likewiſe, that if huſband and wife mortgage ſuch leaſehold eſtate, they will be entitled to the equity of redemption, juſt in the ſame manner as they were before entitled to the leaſe, that is, it will belong to the huſband and wife, and the ſurvivor of them. But the chief queſtion in this caſe is, Whether by the ſurrender of the old leaſes by the mortgagee, and the taking new ones, the title be ſo altered as that the equity of redemption of the new leaſe ſhall belong to the huſband only? And as to this, I apprehend that if the mortgagee had, without the conſent of the huſband and wife, ſurrendered the old leaſes and taken new ones, the equity of redemption of the new leaſes would belong to the huſband and wife, juſt in the ſame manner as the equity of redemption of the old ones; and the ſurrender being made with their conſent, I think will make no difference. If, indeed, in the declaration of the truſts of the new leaſes, the proviſo had been, that upon payment of the mortgage-money the mortgagee ſhould aſſign to the huſband, his executors or adminiſtrators, this might have barred the wife of the equity of redemption. But I obſerve Mr. *B—n* and his wife join in the declaration of the truſts of the new leaſe, and the proviſo is, that upon payment of the mortgage-money the mortgagee ſhall aſſign to Mr. *B—n* and his wife, or as *they* ſhall direct: ſo that, upon the whole, I am of opinion, that Mrs. *B—n*, having ſurvived her huſband, is entitled to the equity of redemption of the new leaſes by ſurvivorſhip, and conſequently that the ſame are not liable in law or equity to the payment of Mr. *B—n*'s debts. But as great doubts have been made upon the caſe, I ſhould think it adviſable for Mr. *G.* to take the opinion of ſome eminent counſel, and not to rely upon my opinion.

nion. In 2 *Vern.* 499, *Fletcher & al.* againſt Lady *Sidley & al.* there is a material caſe, as I think, to prove, that the premiſes in queſtion cannot be liable to the payment of Mr. *B—n*'s debts; for in the caſe above-cited it appears, that where the huſband purchaſed a leaſehold eſtate in the name of a truſtee, and took a declaration in truſt to himſelf for life, and afterwards in truſt for his wife, the court would not deem this to be fraudulent as againſt creditors; whereas in the preſent inſtance the eſtate was originally the wife's eſtate, and even the fine paid upon the renewal of the leaſe appears to remain a charge upon the eſtate.

T. Barnardiſton.

CASE.

Abſtract of the title to leaſehold premiſes.

6th *June*, 1694. LEASE from mayor, *&c.* of *London*, to *T. H.* for 61 years, from Ladyday 1694, of

"ALL that their new-built meſſuage, ſituate in the ſouth-"weſt-end of *London Bridge.*"

17th *June*, 1725.—ASSIGNMENT of the above leaſe, *W. S.* to *W. E.* in conſideration of 150*l.*

3d *December*, 1728.—LEASE from mayor, *&c.* of *London*, to *W. E.* of ſame premiſes for 32 years, to commence at Ladyday 1755.

17th *April*, 1729.—MORTGAGE aſſignment of ſame premiſes for 61 years term, *W. E.* to *T. S.* Eſq;

Ditto, ——— ſame premiſes, for 32 years term, ditto to ditto.

9th *April*, 1739.—RELEASE of equity of redemption on the two before-mentioned mortgaged terms, *W. E.* to *E. S.* executrix of her huſband *T. S.*

Jur. 11th *April*, 1739.—AFFIDAVIT made before Maſter *Thurſton*, by *W. E.* that at the time of the above conveyance to Mrs. *S.* premiſes were not incumbered, and that he believed original leaſe granted by the city to *T. H.* was loſt or miſlaid.

12th *June*, 1729.—BY WILL of this date, *T. S.* (inteſtate) gave what leaſehold terms of his ſhould be to come and unexpired at the time of the deceaſe of his wife *E. S.* to be diſpoſed of by her to ſuch of his four nieces as ſhe ſhould pleaſe to leave the ſame, or their heirs.

N. B. Mrs. *E. S.* died without a will.

15th *Feb.* 1745.—LETTERS of adminiſtration granted out of the prerogative court of *Canterbury*, to *C. H.* widow and adminiſtratrix of the goods and chattels of *E. S.* deceaſed, who was ſole executrix and reſiduary

reſiduary legatee of *T. S.* deceaſed, of the goods, *&c.* unadminiſtered by the ſaid *E.* of the ſaid *T.*

The four nieces and next of kin of *T. S.* are *Elizabeth* married to *C. H. Catharine* to *R. H. Thomaſine* to *W. S. Martha* to *C. C.*

Mrs. *H.* was a widow at Mrs. *S.*'s deceaſe, who is ſince dead, leaving two children, *viz. A.* and *E.* who are of full age.

Opinion on the above abſtract.

The leaſe made in 1695, being loſt, is of no conſequence, as it expired in 1755. *T. S.*'s four neices being the next of kin to him, and adminiſtration having been granted to one of them, they have an equal right to this leaſehold eſtate; but *C. H.* being dead, her intereſt in one fourth of the term devolves upon her ſon and daughter in moieties, under the directions of her will, as part of the reſidue of her eſtate; and as they are both of age, they, by joining with the huſbands of the three ſurviving nieces in a ſurrender of the term, will be a ſufficient title for the city; and though the term for years is a chattel real, yet the huſbands may diſpoſe thereof in their lives without their wives concurrence; but have no power to deviſe it.

Guildhall, Oct. 30, 1761. *Tho. Nugent.*

CASE.

On the 9th of *February* laſt, *A. a trader*, applied to *B.* to lend him 180 *l.* and *B.* accordingly advanced and lent *A.* 49 *l.* in part thereof; but ſoon after *B.* being uneaſy at the advancing and lending the ſaid ſum without ſome ſecurity, he propoſed to *A.* that if he would make him a bill of ſale of his utenſils in trade and ſtock, he the ſaid *B.* would make the aforeſaid ſum of 49 *l.* up the ſum of 180 *l.* on the credit thereof; and accordingly ſome few days afterwards, in the ſaid month of *February*, a bill of ſale was made and executed between the ſaid parties; but the ſaid bill of ſale was not executed the day the ſame was dated.

The reſidue of the conſideration was paid and made up by *B.* to *A.* by two drafts for money; but that the ſaid drafts were not given by *B.* to *A.* at the time of his executing the ſaid bill of ſale, but the ſame were given to the ſaid *A.* about two months afterwards, and poſſeſſion of the ſaid utenſils in trade and ſtock was given to *B.* by the delivery of a horſe in *London*, and *B.* never went to take the poſſeſſion thereof out of the hands of the vender; but *A.* made uſe of the ſaid utenſils in trade and ſtock as before, and continued in the poſſeſſion thereof under a verbal agreement between *A.* and *B.* that *A.* ſhould pay *B.* 10*s.* 6*d.* *per* week for the uſe thereof, neither was the ſaid bill of ſale known to any of the ſaid *A.*'s other creditors, but was, at his requeſt, to be kept a ſecret.

About three or four days after the executing of the ſaid bill of ſale, *B.* propoſed to *C.* ſervant to *A.* that *C.* ſhould take an aſſignment of the bill of ſale made by *A.* to *B.* becauſe it would be better and more

advantageous

advantageous to him as he lived upon the ſpot; and *B.* in conſideration of 180*l.* aſſigned over the ſaid bill of ſale to *C.* but the conſideration money was not then paid by *C.* to *B.* becauſe it was verbally agreed between them, that *C.* ſhould work it out for *B.*'s uſe in the way of his trade, and *C.* hath not yet paid any part of the ſaid 180*l.* or done any work for *B.* on account thereof in purſuance of the ſaid agreement, and poſſeſſion of the ſaid utenſils in trade and ſtock was given by *B.* to *C.* by the delivery of a horſe in *London*; yet notwithſtanding all this, *A.* carried on the trade as uſual, and all commiſſions or orders for work were taken in his name, till the month of *October* laſt, and he continued in the poſſeſſion of the ſaid utenſils in trade and ſtock as before; and the ſaid aſſignment by *B.* to *C.* was kept a ſecret, and was not known to any of *A.*'s creditors, becauſe if it had been known it might have prejudiced *A.*'s credit.

"*Note*, The attorney who was employed to draw the bill of ſale "from *A.* to *B.* had orders given him, at the ſame time he was "to prepare the ſaid bill of ſale, to make and prepare an aſſignment "of the ſame ready to be executed, and was requeſted on the "behalf of *A.* to keep the ſame a ſecret, leſt it might hurt *A.*'s "credit, and for that purpoſe he engroſſed ſuch bill of ſale and "aſſignment, all with his own hand, and was a ſubſcribing "witneſs to both bill of ſale, and aſſignment; but no money "then paſſed."

On the 6th of *October* laſt, a commiſſion of bankruptcy iſſued againſt *A.* whereupon he hath been declared a bankrupt, and *A.* having done ſeveral meſne acts, by which he hath aſſigned and transferred the property of his eſtate and effects to the prejudice of his creditors in trade, between *February* laſt, the time of his making the ſaid bill of ſale to *B.* and the ſaid 6th *October*.

Query, Upon the circumſtances of this caſe, whether the making and executing the bill of ſale by *A.* to *B.* and *B.*'s aſſigning the ſame to *C.* as above ſet forth, and *A.*'s continuance in the poſſeſſion of the utenſils in trade and ſtock thereby bargained and ſold, though under an agreement to pay 10*s.* 6*d.* *per* week for the uſe thereof, is not ſuch a badge of fraud as upon due proof thereof will amount to an act of bankruptcy, and invalidate all the meſne acts done by *A.* with reſpect to the diſpoſition of his eſtate and effects, between the date of that bill of ſale, and the teſt of the commiſſion of bankruptcy iſſued againſt him, and whether the ſame will not be ſufficient evidence on a trial at law to recover the effects of *A.* in an action of trover?

Opinion, I think the executing that bill of ſale, and the other circumſtances, do not amount to an act of bankruptcy, there being a real conſideration for the bill of ſale as a ſecurity.

30th *November*, 1744. *Dudley Ryder.*

CASE.

CASE.

F. C. a citizen and freeman of *London*, died inteſtate, leaving a widow (but no children or grand-children) and three nephews and nieces who are his next of kin, between whom and the widow his perſonal eſtate is now to be divided, according to the cuſtom of the city of *London*, and to the directions of the ſtatute of 22 & 23 of King *Charles* the Second, *Intituled*, "An act for the better ſettling of inteſtates eſtates."

Note, The inteſtate had been a freeman many years before the making of the act of the 11th of King *George* the Firſt, *Intituled*, "An act for the regulating elections within the city of *London*, and for preſerving the peace, good order, and government of the ſaid city."

The widow claims a moiety of the clear perſonal eſtate, as belonging to her by virtue of the cuſtom of the city of *London*, and a moiety of the remaining moiety by virtue of that ſtatute; *and further* claims an allowance for her widow's chamber, agreeable to the cuſtom of the ſaid city.

The whole clear perſonal eſtate amounts to 1000 *l.* or upwards. The deceaſed being a plain working man, the houſehold goods and furniture were very plain and ordinary, and are all valued at no more than 82 *l.* 10 *s.* 0 *d.*

The whole furniture in the chamber, where they uſually lay, is valued at but 18 *l.* 0 *s.* 0 *d.* among which there is no bed linen of any kind or ſort, except a linen quilt.

Query. Is the widow entitled to a moiety of the inteſtate's clear perſonal eſtate by virtue of the cuſtom of the city, and to a moiety of the remaining moiety by virtue of the before-mentioned act for ſettling of inteſtates eſtates, or not?

Opinion. I am of opinion, that the widow is entitled to a moiety of the inteſtate's clear perſonal eſtate by virtue of the cuſtom of the city, and to a moiety of the remaining moiety by virtue of the before-mentioned act for ſettling of inteſtates eſtates.

Query. Is the widow entitled to any, and what part or ſhare, or any, and what ſum of money out of the inteſtate's perſonal eſtate in lieu of her widow's chamber? if ſhe is, out of what part of the eſtate is it to be deducted? or is ſhe obliged to take the furniture of her chamber in *kind*, or the *value thereof* according to the appraiſement in ſatisfaction of that claim, and in what manner is the eſtate to be diſtributed?

Opinion. I am of opinion, that the widow will not be obliged to take the very furniture found in the beſt chamber at her huſband's

death, or the value thereof upon an appraiſement; but will be allowed by the cuſtom of *London* (as it is now taken to be) a competent ſum in lieu of her widow's chamber, according to the *quantum* of her huſband's perſonal eſtate, which allowance is uſually, and ought, in my opinion, in this caſe to be the 40th part thereof, ſo as ſuch 40th part doth not exceed the ſum of fifty pounds in the whole, which 40th part is to be taken out of the whole neat perſonal eſtate after the debts and funeral are paid, and before the ſame is diſtributed into parts or ſhares, according to the cuſtom of the city, and the ſtatutes made for the diſtribution of inteſtates, eſtates.

28th *Nov.* 1735. *Sim. Urlin.*

CASE.

KNOW all men by theſe preſents, that we *J. P.* of, *&c.* mariner, and *T. H.* of, *&c.* carpenter, are held and firmly bound to *S. G.* of, *&c.* Eſq; in the ſum of —— pounds, of lawful money of *Great Britain*, to be paid to the ſaid *S. G.* or his certain attorney, executors, adminiſtrators, or aſſigns, for which payment to be well and faithfully made, we bind ourſelves, jointly and ſeverally, and our joint and ſeveral heirs, executors and adminiſtrators, firmly by theſe preſents, ſealed with our ſeals, dated this —— day of ———, in the —— year of the reign of our Sovereign Lord *George* the Second, by the Grace of God of *Great Britain*, *France*, and *Ireland*, King, Defender of the Faith, *&c.* and in the year of our Lord ———.

THE condition of the above-written obligation is ſuch, that whereas the above-named *S. G.* hath on the day of the date hereof *lent* unto the above-bounden *J. P.* the ſum of —— pounds upon the merchandizes and effects laden and to be laden upon his own account, on board the good ſhip called ———, of the burthen of —— tons, or thereabouts, now in the river of *Thames*, whereof Captain ——— is commander; and if the ſaid ſhip do, and ſhall, with all convenient ſpeed, proceed and ſail from and out of the ſaid river of *Thames* on a voyage to any ports or places in the *Eaſt Indies*, *China*, *Perſia*, or elſewhere, beyond the *Cape of Good Hope*, and from thence do, and ſhall ſail and return into the ſaid river of *Thames*, at or before the expiration of thirty-ſix calendar months, to be accounted from the day of the date above-written, and that without deviation (the danger and caſualties of the ſeas excepted); and if the above-bounden *J. P.* and *T. H.* or either of them, their or either of their heirs, executors, or adminiſtrators, do, and ſhall, within thirty days next after the ſaid ſhip or veſſel ſhall be arrived in the ſaid river of *Thames* from the ſaid voyage, or at the end and expiration of the ſaid thirty-ſix months, to be accounted as aforeſaid, which of the ſaid times ſhall firſt and next happen, well and truly pay, or cauſe to be paid unto the ſaid *S. G.* his executors, adminſtrators, or aſſigns, the ſum of —— pounds of lawful money of *Great Britain*, together with —— pounds of like money

by

by the month, and ſo proportionably for a greater or leſs time than a month, for all ſuch time, and ſo many months as ſhall be elapſed and run out of the ſaid thirty-ſix months over and above twenty months, to be accounted from the day of the date above-written; or if in the ſaid voyage, and within the ſaid thirty-ſix months, to be accounted as aforeſaid, an utter loſs of the ſaid ſhip by fire, enemies, men of war, or any other caſualties, ſhall unavoidably happen, and the ſaid *J. P.* and *T. H.* or either of them, their or either of their heirs, executors, or adminiſtrators, do, and ſhall, within ſix months next after ſuch loſs, pay and ſatisfy unto the ſaid *S. G.* his executors, adminiſtrators, or aſſigns, a juſt and proportionable average on all the goods and effects of the ſaid *J. P.* carried from *England* on board the ſaid ſhip, and on all other goods and effects which he ſhall acquire during the ſaid voyage, and which ſhall not be unavoidably loſt, then the above-written obligation is to be void, or elſe to ſtand and remain in full force and virtue.

Sealed, *&c.*

J. D. *J. P.*
M. P. *T. H.*

The ſhip in queſtion returned into the river *Thames* before the expiration of thirty-ſix calendar months.

Query, Is this bond uſurious? and can the ſtatute of uſury be pleaded in bar?

Opinion, I think this bond is conformable to the forms which have been obſerved in bottomry bills, ſince the act relative to this ſubject, in the 19th of his preſent Majeſty; and as to the intereſt or premium, though it is large in this bottomry bill, yet I conceive it is not ſuch as will make the contract uſurious; and that the ſtatute of uſury cannot be ſafely pleaded to any action brought thereon.

29th *Jan.* 1756. *Ja. Hewett.*

CASE.

ABOUT *October* 1739, one *J. T.* of the pariſh of St. *Brides's*, *London*, cheeſemonger, being diſordered in his ſenſes, ſo far neglected his buſineſs, as to become inſolvent.

The ſaid *J. T.* was at that time poſſeſſed of a conſiderable perſonal eſtate, and likewiſe entitled to the equity of redemption of the moiety of certain copyhold premiſes, ſituate a *Chipperfield*, in the county of *Hertford*, of the yearly rent of 24 *l.* which premiſes were deviſed to *Mary* the wife of the ſaid *J. T.* and *F. I.* ſpinſter, her ſiſter and their heirs for ever, by *F. I.* their mother, to be equally divided, between them the ſaid *M.* and *F.*

AFTER the death of ſaid *F. I.* the mother, the ſaid *J. T.* and *M.* his wife, were admitted to the moiety of ſaid premiſes, under the

will of the ſaid *F.* the mother, *for their lives and the life of the ſurvivor, afterwards to her, and her heirs and aſſigns for ever*, and being ſo admitted on the 20th of *Auguſt*, 1739, in conſideration of 80 *l.* paid by ſaid *F. I.* ſpinſter, the ſaid *J. T.* ſurrendered ſaid moiety to the uſe of ſaid *F. &c.* ſubject to a proviſo to be void on payment of ſaid 80 *l.* and intereſt at the time in ſaid ſurrender mentioned.

ON the ſaid *J. T.* becoming inſolvent, an aſſignment of his eſtate and effects was made to ſome of his creditors, *In truſt* to pay themſelves and the reſt of the creditors, wherein it was preſumed the equity of redemption of the ſaid copyhold premiſes was included.

SOME TIME after, to wit, on or about the month of *March*, 1740, the ſaid *J. T.* became quite lunatick, and having no perſon to take care of him, the ſaid pariſh of St. *Bride's* was obliged (as he belonged to them) to take him into their workhouſe, where they maintained him for ſome time, but he growing worſe they got him into Bedlam Hoſpital, where he now remains at the charge of the ſaid pariſh, for which they pay the ſum of 2 *s.* 6 *d.* per week, beſides ſome other neceſſaries found for him.

1ſt *October*, 1741.—*F. I.* of the pariſh of St. *Mary Iſlington*, in the county of *Middleſex*, ſpinſter, (being the ſame *F. I.* above mentioned) by her laſt will and teſtament in writing duly atteſted, and ſince proved, gave to divers perſons therein mentioned ſeveral pecuniary and ſpecifick legacies, and for the performance thereof, by the ſaid will, gave, deviſed and bequeathed, all her eſtate both freehold and copyhold to *H. H.* of *Newgate-ſtreet*, *London*, cheeſemonger, *to hold* to him and his aſſigns, upon ſpecial truſt, to ſell and diſpoſe of the ſame for the beſt price or prices which could be gotten, and by and out of the monies ariſing by ſale thereof, to pay and diſcharge her debts, legacies and funeral expences, if her perſonal eſtate ſhould not be ſufficient; and as to the reſt and reſidue of the monies ariſing by ſuch ſale, *to pay, apply, and diſpoſe thereof in ſuch manner, and to ſuch perſon or perſons (except to J. T. her huſband) as her dear ſiſter, the wife of the ſaid J. T. ſhould by any deed or writing notwithſtanding her coverture, under her hand, atteſted by two or more credible witneſſes, direct or appoint*, it being her (the teſtatrix's) intention and will, that the ſame ſhould be for her ſole and ſeparate uſe, and not ſubject or liable to the controul or debts of her ſaid huſband; and by the ſaid will conſtituted and appointed the ſaid *H. H.* whole and ſole executor thereof.

AFTER the deceaſe of the ſaid teſtatrix, the executor *H. H.* purſuant to the authority in the will, ſold one moiety of the ſaid copyhold premiſes, at *Chipperfield*, above mentioned, and the money ariſing thereby was applied in diſcharge of the debts and legacies, *&c.* of teſtatrix; the ſurplus thereof being about 110 *l.* together with the reſt, reſidue, *&c.* of teſtatrix's eſtate, was applied to the uſe of the ſaid *M.* the wife of *J. T.* according to the directions of the ſaid will.

3d *Auguſt*, 1744.—The ſaid *M. T.* wife of the ſaid *J. T.* by her laſt *will and teſtament*, duly executed and atteſted by three witneſſes, *thereby reciting* the above recited will of her ſaid ſiſter *F. I.* and that in

pur-

purſuance of the authority thereby given to her by the ſaid will, &c. as far as ſhe lawfully might and could, did give, deviſe and bequeath unto her couſin *W. M.* of *Ivy-lane*, *London*, baker, and *J. H.* of the pariſh of St. *Botolph*, *Alderſgate*, *London*, baker, their heirs and aſſigns for ever, all her real, perſonal, and copyhold eſtates, goods, chattels, plate, and effects whatſoever and whereſoever, (except the ſeveral ſpecifick plate, rings and clothes, therein after by her diſpoſed of) IN TRUST thereby and thereout in the firſt place to pay and diſcharge all her juſt debts and funeral charges, by ſale and diſpoſal of of all or any of her perſonal eſtate, and after payment and ſatisfaction thereof, then to pay the rents, profits, and produce of a moiety of the ſaid copyhold eſtate at *Chipperfield*, in the county of *Hertford*, unto her huſband the ſaid *J. T.* for and during the term of his natural life, and from and after his deceaſe, the teſtatrix ordered and directed that the ſaid moiety of the ſaid copyhold eſtate to be ſold, and the money ariſing from ſuch ſale to be applied to and for the purpoſes in will mentioned, and further by the ſaid will teſtatrix gave to ſeveral perſons therein named, divers pecuniary and ſpecific legacies, and appointed the ſaid *W. M.* and *J. H.* executors thereof.

SOON after making the ſaid will teſtatrix died poſſeſſed of real and perſonal eſtate, ſufficient to anſwer the purpoſes in will mentioned, and among others died poſſeſſed of certain goods, chattels, and effects to the amount of 34 *l.* which ſhe had taken to her own uſe, being the property of her huſband *J. T.* but great part of which teſtatrix had given to divers perſons in will mentioned as ſpecifick legacies.

N. B. The ſaid *M. T.* it is preſumed, never made any ſurrender to the uſe of her will.

The above named *J. T.* is now in Bedlam, at the expence of the pariſh of St. *Bride's*, who have expended in maintaining the ſaid *J. T.* both before and ſince his being in Bedlam, the ſum of 30 *l.* or thereabouts, and as there is little hopes of the ſaid *J. T.* ever being quite ſane, are liable to expend other ſums of money in his maintenance, and that perhaps as long as he lives, unleſs the pariſh can ſome way ſecure the intereſt, it is preſumed the ſaid *J. T.* hath under the above two recited wills for his maintenance, or thereby or thereout reimburſe and repay themſelves.

N. B. The ſaid *J. T.* is now ſuppoſed by the phyſician that attends the hoſpital, to be in a fair way of doing well, and for that reaſon the committee purpoſe to diſcharge him in a week's time, if he continues as well as he is at preſent, but the danger will be on his going out, when perhaps by liquor or other intemperance he may poſſibly become as bad as ever.

Query. Hath the ſaid *J. T.* any, and what right or intereſt under the above wills to any, and what part of the eſtate and effects left either by his ſiſter *F. l.* or his wife *M. T.* and in what manner *would you adviſe*, or can the pariſh of St. Bride's proceed

for gaining ſuch part thereof, as it is preſumed the ſaid *J. T.* is intitled unto, in order to reimburſe themſelves, what they have already expended on his account, and to prevent any future expence they may be liable to on the ſaid account?

Opinion. I am of opinion that *J. T.* is intitled to the equity of redemption of that moiety of the copyhold eſtate, which was his wife's at the time of their intermarriage, if not aſſigned to his creditors, and that he likewiſe will be entitled to the *reſiduum* of his wife's ſeparate eſtate, ſubject to her debts and ſuch legacies as ſhe by virtue of her power of making an appointment, has charged thereupon, for *F. I.* having by her will directed her eſtates to be ſold, they are conſidered as money, and there being no deviſe over after the death of *M. T.* in caſe ſhe died without executing her power of making an appointment, the whole veſted in her; and of conſequence, if *M. T's* will or deed of appointment, ſo far as it relates to her huſband, is void and rendered of no effect by the expreſs excluſion of him in *F. I's* will, then as to that *M. T.* is dead without executing her power, and it will belong to her huſband; but on the other hand, if the appointment for the benefit of the huſband be good, then he may take under that; ſo in either of theſe caſes *J. T.* will be entituled to the *reſiduum* of his wife's ſeparate eſtate.

N. B. The executors of the above *F. I.* and *M. T.* are ready and willing to act in an amicable manner with the pariſh of St. *Bride's*, and to do all things in ſuch a manner as to give the leaſt trouble, provided that they are properly indemnified for ſo doing.

Query. Therefore pleaſe to adviſe how, and in what manner the above perſons executors, or ſuch of them as are neceſſary, ſhould or can ſafely act in the above affair, and what is requiſite and neceſſary for them to do in relation to the ſaid pariſh, and the ſaid *J. T.* and if ſaid *T's* wife *M.* deceaſed, by virtue of the ſaid ſiſter *F. I.* ſpinſter's will, had power to make ſuch will and deviſes in ſuch manner, as ſhe has thereby taken upon herſelf to deviſe the ſame?

Opinion. I think the regular way would be to take out a commiſſion of lunacy againſt *J. T.* but as the caſe will not bear the expence of that, I think it will be adviſeable that the overſeers of the poor, and the churchwardens of the pariſh of St. *Bride's*, give a bond, in which they muſt oblige themſelves and their ſucceſſors, to ſave harmleſs and indemnify the executors of *F. I.* and *M. T.* againſt any payments or acts which they or any of them ſhall from time to time make or do to them or any of their ſucceſſors, on the behalf or upon the account of *J. T.*

12th *October*, 1744. *Fletcher Norton.*

CASE.

CASE.

G. M. died inteſtate about twenty years ago, ſeiſed of a freehold eſtate in fee-ſimple in his own right, leaving behind him two daughters by two different wives; the elder daughter *Dorothy*, her uncle *W. M.* only brother to the ſaid *G. M.* deceaſed, took under his tuition, and the younger daughter *Rachel*, her mother *C. M.* widow, took care of; and ſoon after a difference aroſe betwixt *W. M.* and *C. M.* the guardians of the ſaid children, about the diviſion of the real and perſonal eſtate of the ſaid *G. M.* between the ſaid children, and ſubmitting themſelves to a reference under the penalty of 40*l.* each, to two perſons, as in ſubmiſſion bond therein named doth appear, to make a final end of all differences betwixt the ſaid *W. M.* and *C. M.* and accordingly they did ſo, by award in writing under their hands and ſeal, dated 10th of *April*, 1716; in the ſaid award the lands being equally divided betwixt the ſaid daughters, till they or one of them ſhould arrive at the age of twenty-one years. The elder daughter *Dorothy* died two or three years ſince, and the younger daughter *Rachel*, being come to the age of twenty-one years, three or four months ſince or thereabouts, *W. M.* having enjoyed the ſaid lands, as ſet forth to her the ſaid *Dorothy* by the *referrees*, both as long as ſhe lived and ever ſince, as long as ſhe lived, for her maintenance, and ſince ſuppoſing himſelf to be next heir, the other moiety of the ſaid lands ever ſince the diviſion being enjoyed by the younger daughter *Rachel*, and her mother as her guardian.

Query. Whether *W. M.* the only brother to the ſaid *G. M.* deceaſed, and uncle to the ſaid *Dorothy*, ſhall be heir at law to the ſaid *Dorothy*, as to her moiety as above ſet forth in the caſe, or *Rachel*, the half ſiſter to the ſaid *Dorothy*, both by one father, but not both by the ſame mother, or how, or in what manner will the moiety go according to law?

Opinion. It is an eſtabliſhed rule in law, that an heir muſt be of the whole blood of the perſon who was laſt ſeiſed of the whole eſtate, and therefore I conceive that the uncle in this caſe and not the half ſiſter, is entitled to *Dorothy's* moiety of the eſtate, as heir at law to her; as to what is ſtated relating to the reference, I am of opinion that it will have no influence upon the preſent caſe.

T. Barnardiſton, Middle-Temple.

CASE.

A a merchant of *London*, being a great ſufferer by the earthquake at *Liſbon*, called his creditors together, and repreſented to them the ſtate of his affairs, and at the ſame time made a propoſal to them to compound his debts, and to pay them four ſhillings in the pound for their reſpective debts; which offer of compromiſe they rejected, and inſiſted on his laying before them a particular ſtate of his debts and credits.

A. has ſtanding in his own name ſeveral ſhares in the Sunfire Office.

The creditors have been at the office, and given notice to the proper officer not to transfer the ſhares to any perſon whatſoever.

A. is deſirous to transfer the Sunfire Office ſhares to one of his creditors, in ſatisfaction of part of a debt which he juſtly owes him.

Query. Is *A.*'s propoſal made to his creditors, in manner ſtated, *an act of bankruptcy*, and can his creditors take out a commiſſion on ſuch propoſal of a compoſition (no other act of bankruptcy having been committed by *A.*)?

If the above ſtep taken by *A.* is not an act of bankruptcy, may he not transfer his ſhares to one of his creditors in ſatisfaction of a juſt debt? and will the proper officer of the Sunfire Office be juſtified (notwithſtanding the notice given as above) in making ſuch transfer?

Opinion. I am of opinion, that the propoſal made to *A.* to compound his debts, is not any act of bankruptcy, nor can the creditors ſupport a commiſſion on that account; and as *A.* has not committed any act of bankruptcy, he has a right to transfer his ſhares to whom he pleaſes. He may certainly transfer them to a creditor in ſatisfaction of an honeſt debt; for I know no law that prevents a trader (not a bankrupt) preferring one creditor to another; but transferring them to a ſtranger not a creditor, would be a fraud, and an act of bankruptcy, as confeſſing a judgment where there is no debt.

5th *May*, 1755. *Edw. Green.*

CASE.

CASE.

BY ſtat. 29 *Geo.* 2. intituled, *An act to improve, widen, and enlarge the paſſage over and through* London Bridge, among other things, the mayor, aldermen, and commons of the city of *London*, in common council aſſembled, are impowered to contract and agree for the purchaſing of all houſes, tenements, edifices, erections, and buildings, ſtanding or being on the ſaid bridge, or contiguous or adjoining thereto, which the ſaid mayor, aldermen, and commons, in common council aſſembled, ſhall judge neceſſary to be taken down and removed, for the enlargement and improvement of the paſſage over, and of the avenues leading to and from the ſaid bridge.

Sect. 8. And whereas it may happen that ſome perſons or bodies politic, corporate, or collegiate, feoffees in truſt, femes coverts, or others, who are ſeiſed of ſome houſes, edifices, or grounds, which may be neceſſary to be pulled down or purchaſed, and ſet out or aſſigned for widening and enlarging the paſſage over the ſaid bridge, or of the avenues leading thereto, may be willing to treat and agree to ſell ſuch houſes, edifices, and grounds, to perfect ſo uſeful and neceſſary a work, but are incapable of ſelling, granting, or conveying the ſame; it is therefore enacted, That it ſhall and may be lawful, to and for all bodies politic, corporate or collegiate, corporations aggregate or ſole, and all feoffees in truſt, executors, adminiſtrators, guardians, or other truſtees whomſoever, and for all femes coverts, and every other perſon or perſons whomſoever, who are or ſhall be ſeiſed, poſſeſſed of, or intereſted in any ſuch houſes, edifices, tenements, or ground, *to ſell and convey all or any ſuch houſes, edifices, tenements, and ground, or any part thereof, and all their eſtates, rights, titles, and intereſts whatſoever, of, in, and to the ſame, to the ſaid mayor, commonalty, and citizens, and their ſucceſſors, or to ſuch perſons, and their heirs for ever, as the ſaid mayor, aldermen, and commons, in common council aſſembled, ſhall direct, in truſt for the ſaid mayor, commonalty, citizens, and their ſucceſſors, for the purpoſes in this act contained*; and that all contracts, agreements, ſales, and conveyances, which ſhall be ſo made by virtue and in purſuance of this act as aforeſaid, ſhall, without any fine or fines, recovery or recoveries, or other conveyance or aſſurance in the law whatſoever, be good, valid, and effectual, to all intents and purpoſes, any law, ſtatute, uſage, or any other matter or thing whatſoever to the contrary thereof in any wiſe notwithſtanding; and that all ſuch perſons are and ſhall be hereby indemnified for what they ſhall do by virtue of, or in purſuance of this act.

Sect. 9. It is further enacted, that where any perſons ſhall refuſe to treat and agree, or are prevented from treating and agreeing, or ſhall decline or refuſe to ſell, convey, and diſpoſe of the premiſes, whereof, wherein, or whereunto, they reſpectively ſhall be ſo ſeiſed, poſſeſſed, intereſted, or intitled as aforeſaid, or ſhall not make out a clear title to the premiſes, the court of mayor and aldermen are hereby empowered and authorized to iſſue a precept for the ſummoning

and returning a jury of ſubſtantial diſintereſted perſons qualified to ſerve on juries, and are hereby authorized, by precept or order from time to time, as occaſion may require, to call before them all and every perſon and perſons whomſoever, who ſhall be thought neceſſary to be examined as witneſſes before them, and examine them on oath touching the premiſes, and may, if they think fit, direct the jury to view the places or matters in queſtion, who, upon their oaths, ſhall aſſeſs the value of ſuch houſes, ground, tenements, edifices, erections, and buildings, which ſhall be neceſſary to be purchaſed, and of the reſpective eſtate and intereſt of every perſon ſeiſed or poſſeſſed of, or intereſted therein, or in any part thereof, and the court of mayor and aldermen may give final judgment thereon, fourteen days notice of ſuch aſſeſſment having been previouſly given to the parties intereſted.

Sect. 10. It is alſo enacted, That upon payment of the purchaſe-money ſo aſſeſſed and decreed, the perſon or perſons entitled to ſuch houſes, tenements *&c.* ſhall make and execute good, valid, and legal conveyances and aſſurances in the law of ſuch eſtate or intereſt for which ſuch ſums of money ſhall be awarded, to the ſaid mayor, commonalty and citizens of *London*, or to any perſon or perſons whom the ſaid mayor, aldermen, and commons, in common council aſſembled, ſhall direct and appoint, and their heirs, in truſt for the uſe of the city *&c.*

Query. What mode of conveyance will it be proper for the city of *London* to take in the purchaſe of eſtates under the above abſtracted act?

Opinion. As this act of parliament has directed a general method of conveyance to paſs any kind of intereſt, and eſtate, which is deſcribed by the words *fell and convey*, I think the city had better follow that method, and take in all theſe eſtates by a like inſtrument, reciting that clauſe in the act of parliament; ſuch a deed will operate like an aſſignment of a bankrupt's eſtate under the bankrupt's acts; this will be better than to enter into a common law method of conveyancing: for if the leaſes are only cancelled, and nothing conveyed, they may ſtill remain liable to dormant or equitable incumbrances, and the city will have no deed to evidence the conveyance; I ſhould likewiſe think it would be better to take all theſe conveyances to the corporate body, where the fee will remain for ever undiſturbed, and not leave the legal eſtate in truſtees, who in a courſe of time will be forgot, and the heir of the ſurvivor unknown and loſt.

C. Yorke.

Opinion. If the city was to take a ſurrender from each of their immediate leſſees, and ſeparate aſſignments of the under-leaſes (for they cannot take ſurrenders of theſe laſt by reaſon of the intermediate intereſt) that method muſt neceſſarily be attended with very great expence; to avoid which I think the city may ſafely *pay the purchaſe-money* to ſuch leſſees, upon their delivering up their

their leaſes cancelled, with a receipt indorſed upon the back, expreſſing the conſideration money was paid on that account; for the cancelling of the deed will deſtroy and avoid the leaſe itſelf, becauſe it deſtroys all evidence by law for the ſupport of it, neither can there be any pretence in this caſe for a court of equity ever to ſet up theſe leaſes again, or to compel the city to execute new ones for the reſidue of the terms.

Where it is neceſſary for the city to purchaſe the inheritance, the conveyance may be by leaſe and releaſe to the corporation, that being a ſafe and the common method, without appointing truſtees, which in this caſe would be attended with unneceſſary trouble and expence; and if there are many outſtanding terms, I think the method above preſcribed may be purſued to prevent expence alſo; but if there are only a few ſuch, the more regular way will be to have them aſſigned to Mr. Town Clerk, or ſome other perſon in truſt for the corporation.

Tho. Nugent.

Query. Are the committee under this act authoriſed to make any, and what allowance in conſideration of the detriment the occupiers of ſuch houſes &c. may ſuſtain from their removal?

Opinion. I am of opinion the committee cannot do this by the act of parliament, nor ought the jury to take theſe expences into their conſideration when they give their verdict; for nothing is before them but the value of the eſtate and the parties intereſt therein; the inconvenience and the expence of changing are circumſtances that will incline a jury, and may honeſtly prevail with the committee to give the owner the beſt and higheſt price for his houſe; but if they go beyond that, the additional ſum is a gratuity, whereas they are only to buy, and not to give.

C. Yorke.

Opinion. As that breach of the ſtatute fol. 15, which impowers perſons to ſell to the city, mentions houſes, edifices, tenements and grounds, and all their eſtates, rights, titles, and intereſts therein, and after fol. 19, in caſe they cannot agree, the jury is to enquire of the value of ſuch houſes, ground, tenements, edifices, erections, and buildings, and of the reſpective eſtate and intereſt of every perſon ſeiſed, or poſſeſſed of, or intereſted therein, which words confine and reſtrain the power of the committee to the particular inſtances therein mentioned; and as they cannot enlarge or put an equitable conſtruction upon thoſe words, I think they are not enabled to relieve the occupiers in any of the inſtances mentioned in the above queſtion.

Tho. Nugent.

Query. By whom are the jury, impannelled for the purpoſes of this act, to be paid?

Opinion. I think, as the parliament has not directed who ſhall pay the jury, the city ſhould be at that expence in all caſes; for the whole proceeding is compulſory againſt the owners, and the public enjoys the benefit, and it would be hard to make a man pay a jury for valuing his eſtate againſt his will, when if he was left to himſelf, perhaps, he would not ſell it at any rate.

C. Yorke.

Opinion. No judgment can be formed upon this point, by conſidering the manner of paying juries either at common law, or under the ſtatute of the 24th of the preſent King, and as it may be an hardſhip on the city to pay juries, in caſes where they find by their verdict the committee have offered a reaſonable price, and an unreaſonable one has been inſiſted upon, ſo it might be equally hard that perſons obliged to ſell ſhould pay them upon a miſtaken calculation of the real value of their intereſts, and the act being totally ſilent in that matter, and the power of ſummoning juries given only to the city, for whoſe benefit the act was made, I think they are to be paid by the city.

Tho. Nugent.

CASE.

20th *May*, 1736. *J. K.* by will deſires, that all juſt debts as ſhall be by him owing, at the time of his deceaſe, be fully paid and ſatisfied.

And in the ſaid will it is recited, that he purchaſed of *R. B.* deceaſed, and his ſon *J. K.* deceaſed, and his wife, the reverſion and inheritance of two freehold meſſuages, or tenements, therein particularly mentioned, after the deceaſe of *Catharine*, late wife of *R. B.* deceaſed, he thereby gave and deviſed the ſaid two meſſuages (after the deceaſe of the ſaid *Catharine*) *to his wife* Mary *for life*; and after her deceaſe, he gave one of the ſaid meſſuages to his ſon *Thomas*, and his heirs and aſſigns for ever, *he paying to his ſiſter* Suſanna 50 l. *with the payment of which he charged the meſſuage accordingly.*

And alſo after his ſaid wife's deceaſe, he gave the ſaid other meſſuage to his ſaid ſon *Thomas*, his heirs and aſſigns for ever, *he paying to his ſiſter* Suſanna 50 *l. more.*

And gave the reſidue of his perſonal eſtate and effects to his ſaid wife, and appointed her and his ſaid ſon *Thomas* joint executors.

28th *March*, 1737, by indenture the ſaid *J. K. in conſideration of* 300 l. *mortgaged the reverſion of the ſaid two freehold meſſuages for a term of* 1000 *years.*

In *April* 1739, the ſaid *J. K.* died, and on the 17th *May*, 1739, the ſaid *Mary K.* and *Thomas K.* proved the ſaid will.

J. K. the teſtator, died ſeiſed of a freehold houſe in *Catharine-ſtreet*, and a copyhold eſtate at *Enfield*, and alſo poſſeſſed of *three leaſehold houſes in Threadneedle-ſtreet*,

The houſe in *Catharine-ſtreet*, and copyhold eſtate at *Enfield*, were ſoon after the deceaſe of the ſaid *J. K.* the teſtator, conveyed and ſurrendered to ſome creditors, who agreed to accept of them in ſatisfaction of their demands on teſtator's eſtate, and *the rents and profits of ſaid three leaſehold houſes, and alſo of two freehold houſes*, have (ever ſince the death of the ſaid *Catharine B.*) been applied, after payment of taxes, repairs, and ground-rent) in the payment of the intereſt of the ſaid 300*l.* and in diſcharge of the debts due and owing from the eſtate of the ſaid *J. K.* the teſtator, as far as they have extended, ſo that the ſaid two legacies of 50*l.* ſo given to *Suſanna K.* and charged on the ſaid two freehold houſes, have not been paid, and there remains due on the ſaid *teſtator's bond the ſum of* 50 l. *and a conſiderable arrear of intereſt*, beſides ſeveral other debts to ſimple contract creditors to a conſiderable amount.

4th *December*, 1746, Mrs. *Mary K.* the teſtator's widow, died.

The teſtator *J. K.* had five children, *John*, *Rebecca*, *Suſanna*, *George*, and *Thomas*.

John, the eldeſt ſon, married, and died in the life-time of his father, and mother, leaving iſſue one ſon, named *John*, who likewiſe married, and is ſince dead inteſtate, leaving iſſue a daughter, named *Mary*, *an infant*.

Rebecca is ſtill living, but has no children.

Suſanna died unmarried, and inteſtate, the 22*d* November, 1746.

George died in the life-time of his father unmarried.

Thomas died in June, 1747, *uumarried and inteſtate.*

Query 1*ſt.* Will the inheritance in fee-ſimple of the ſaid two houſes deſcend unto and upon *Rebecca the daughter of* J. K. *the teſtator*, or to *Mary his great grand-daughter*, ſubject to the ſaid mortgage for 1000 years, for payment of 300*l.* and intereſt, and alſo ſubject to the payment of the ſaid two legacies of 50*l.* each, deviſed to *Suſanna* the teſtator's daughter?

Query 2*d.* *Suſanna* being dead inteſtate, to whom do theſe legacies of 50*l.* belong?

Query 3*d.* Is the teſtator's bond-debt of 50*l.* a charge upon the ſaid two freehold houſes, or muſt his perſonal aſſets and effects be firſt applied towards the payment thereof?

Opinion. I am of opinion, *That the fee-ſimple of the two houſes deſcends to* Mary *the great grand-daughter as heir*, ſubject to the incumbrances.

The two ſums of 50*l.* belong to *Suſanna's adminiſtrator*, whoever ſhall be ſo, as her aſſets liable to her debts with the reſt of her perſonal eſtate, *the reſidue of which belongs to the repreſentatives of her mother, and the repreſentatives of* Thomas *and* Rebecca *in equal thirds*.

The

The teſtator's perſonal eſtate muſt be firſt applied in diſcharge of the bond, before it will be payable out of the real *eſtate*.

13th *May*, 1748. *Dudley Ryder.*

CASE.

9th *October*, 1738. BY will of this date *J. S.* deviſed *(int. al.)* unto his ſiſter *Mary*, then wife of *T. W.* all that meſſuage or tenement, together with a coach-houſe and ſtable in the ſaid will mentioned to be ſituate in *Perkins's-rents*, *Weſtminſter*, in the ocupation of *T. C.* for her own ſeparate uſe, during her natural life, and after her deceaſe, to the teſtator's ſiſter *Elizabeth S.* and after her deceaſe *to be equally ſhared amongſt the children of the ſaid* Mary W. (which children were)

Mary, now wife of *S. B.*
Hannah, now wife of *G. G.*
And,
Sarah W.

And ſaid teſtator further deviſed by his ſaid will unto his ſiſter *Elizabeth S.* one houſe and back tenement, ſituate in *Pye-ſtreet*, *Weſtminſter*, and alſo one other houſe or tenement ſituate in *Pye-ſtreet* aforeſaid, and alſo one other houſe or tenement (mentioned to be the houſe wherein teſtator dwelt) during the natural life of her the ſaid *Elizabeth S.* and after her deceaſe *to the ſaid three children of* Mary W. viz. *the ſaid* Mary, Hannah, and Sarah, *and their heirs.*

The ſaid teſtator died in 1742, without altering his ſaid will, and the ſaid *Mary W.* and *Elizabeth S.* took poſſeſſion of the before-mentioned premiſes, according to their reſpective intereſts therein, under the ſaid will.

The ſaid *Mary*, and the ſaid *Hannah* and *Sarah* (with their reſpective huſbands) in the life-time of the ſaid *Mary W.* and *Elizabeth S.* conveyed the ſame as follows:

24th and 25th *November*, 1743. By indenture of leaſe and releaſe, of this date, between *S. B.* and *Mary* his wife, *G. G.* and *Hannah* his wife, and *S. W.* of the one part, and *F. S.* of the other part;

Reciting the before mentioned will, and alſo reciting the ſeveral deviſes to them of the ſaid premiſes, *whereby they were ſeiſed as joint-tenants in fee-ſimple*, and that they had agreed to make a partition of the ſame, and to grant and limit the ſame in the manner and to the ſeveral and reſpective uſes after-mentioned.

It is witneſſed, That for the conſiderations aforeſaid, and in conſideration of five ſhillings a-piece to the ſaid *S. B.* and *Mary* his wife, *G. G.* and *Hannah* his wife, and *Sarah W.* paid by the ſaid *F. S.* they did grant to ſaid *F. S.* and his heirs and aſſigns *&c.* the premiſes mentioned in *J. S.*'s will.

To hold the ſame to the ſaid *F. S.* his heirs and aſſigns for ever.

To the ſeveral-uſes, intents, and purpoſes hereby after-mentioned and declared, of and concerning the ſame, that is to ſay, as for and

Concerning

All

All that meſſuage or tenement, with waſh-houſe, and ſtable, or carpenters work-ſhop, then occupied by the ſaid *G. G.* in *Perkin's Rent*, and all that other meſſuage or tenement beforementioned to be in the tenure or occupation of ——— in *Pye-ſtreet*, *Weſtminſter*, *in Com. Middleſex*,

To the uſe and behoof of the ſaid *G. G.* his heirs and aſſigns for ever, and for no other uſe, intent, or purpoſe whatſoever.

Nota, The other houſes deviſed by *J. S.*'s will are by this deed ſettled to the uſe of *S. B.* and *Mary* his wife, and the ſaid *Sarah W.* with the uſual covenants, and the ſaid *G. G.* covenants with the ſaid *S. B.* and *S. W.* as follows:

That he the ſaid *G. G.* will, within one month after the death of the ſaid *Mary W.* and *Elizabeth S.* pay to the ſaid *S. B.* the ſum of 1 *l.* and to ſaid *Sarah W.* 21 *l.* the ſaid *B.* covenants with the ſaid *G. G.* that in caſe the ſaid *Mary W.* ſhould happen to ſurvive the ſaid *Elizabeth S.* that he will, during the natural life of the ſaid *Mary W.* pay him 2 *l.* 8 *s.* yearly, by quarterly payments; the ſame covenant to *G. G.* by *Sarah W.* for payment of 1 *l.* 8 *s.* executed by all the parties thereto, and the conſent of *Mary W.* and *Elizabeth S.* to the making this deed indorſed.

Note, A fine was levied according to the uſes in the before-abſtracted deed.

The ſaid *Hannah*, wife of *G. G.* died in the life-time of the ſaid *Elizabeth S.* and before ſhe became poſſeſſed of the ſaid premiſes ſo deviſed to her by the will of *J. S.* and left iſſue at her death, *viz.* *Mary* and *Elizabeth*. The ſaid *Mary* died about twelve years ago, and the ſaid *Hannah* has ſince intermarried with one *W. N.*

The ſaid *G. G.* keeps poſſeſſion of the above-mentioned premiſes, deviſed to his wife as aforeſaid, under a pretence that ſhe had an abſolute right to convey or ſell the ſame, though not poſſeſſed thereof at the time of her death, and that by the above abſtracted deed of partition, the ſaid premiſes are now abſolutely veſted in him, and that he has a right to ſell and diſpoſe of the ſame as he pleaſes; and at other times he pretends that he has a life eſtate therein by the *courteſy of* England, as having iſſue born alive of his ſaid wife.

Query. Had the ſaid *Hannah G.* his wife any right to ſettle the ſame on him, as ſhe was not poſſeſſed of or entitled to the ſaid premiſes at the time ſhe made ſuch deed, nor at the time of her death; or do the ſame devolve to *Hannah* her daughter, now *Hannah N.* or hath the ſaid *G. G.* a right to the ſame for his life by the *courteſy of* England, as having a child born alive by her at her death, though ſhe was not poſſeſſed of or entitled to the ſame at the time ſhe died?

Opinion

Opinion. If the facts ſet forth in the recitals of the deed of partition are true, it plainly appears that *G. G.* hath an abſolute title to the freehold and inheritance in fee-ſimple of the premiſes limited to him by the uſe of the fine, and may ſell or diſpoſe thereof as he pleaſes, and his daughter *Elizabeth N.* hath not the leaſt pretence or ſhadow of title thereto.

12th *September*, 1763. *W. Rivet.*

CASE.

1ſt *September*, 1769. BY indenture of this date *T. C.* demiſed to *W. W.* all that meſſuage or tenement ſituate *&c.* to hold to the ſaid *W. W.* his executors *&c.* for the term of eleven years, at the yearly rent of 30 *l.* payable quarterly.

11th *October*, 1771, A commiſſion of bankruptcy was awarded againſt the ſaid *W. W.* the leſſee under the ſaid recited leaſe, and the commiſſioners acting under the ſaid commiſſion aſſigned over his effects to *T. S.* and *J. B.* who were choſen aſſignees under the ſame.

The ſaid *T. S.* and *J. B.* the aſſignees, among the other effects of the ſaid bankrupt, put up the above recited indenture of leaſe to ſale by public auction; but it appearing not to be a beneficial leaſe, they could not diſpoſe of it, and therefore are deſirous of delivering poſſeſſion, and ſurrendering the leaſe to the leſſor.

The leſſor now inſiſts that the aſſignees, by putting the ſaid leaſe up to public ſale, have made the ſame their own, and are therefore obliged to pay the rent for the reſidue of the ſaid term.

Query. Are the aſſignees, by this ſtep taken by them, liable to pay the rent to the leſſor during the reſidue of the term of the ſaid leaſe, or may they notwithſtanding deliver up the leaſe to the leſſor, and thereby diſcharge themſelves therefrom?

Opinion. If the aſſignees have never *entered on or occupied* the premiſes, I think they are not liable to the payment of any part of the rent, notwithſtanding the attempt they have made to ſell the ſame; for till they endeavoured to ſell it, they might not have an opportunity of knowing what it was really worth; even though they ſhould have occupied the houſe for any time, yet I think they would not be liable to pay more rent than the premiſes are really worth; as is the caſe of an executor, who may by plea ſhew, that the premiſes are not worth ſo much as the rent reſerved, and if he has not aſſets, by that means diſcharge himſelf from the payment of more; therefore I am of opinion the aſſignees may now deliver up the leaſe to the landlord, and diſcharge themſelves of it.

Middle-Temple, 21ſt *June*, 1771. *F. Buller.*

CASE.

CASE.

A. Giving a promiſſory note to *B.* for payment of 100 *l.* to him or his order, three months after date, *B.* applied to *C.* to get it diſcounted, and *C.* applied to *D.* for that purpoſe, who agreed to do it at 20 *per cent.* provided *C.* and *E.* who were friends of *B.* would indorſe it as his further ſecurity. They accordingly did ſo, and *D.* advanced the money, and received the diſcount.

When the three months were elapſed, *B.* applied to *D.* to forbear calling in the 100 *l.* and made him a preſent of ſeveral guineas for continuing it ſeveral months after ſuch further preſent made, and after the note had been due. *D.* applied to *A.* to let him know the note was not taken up, whereupon *A.* replied, he was ſurprized at it, but as he had none of the money, he would never pay it, and therefore told *D.* he muſt look to *B.* as his paymaſter, and adviſed him to do it forthwith.

B. after this requeſted *D.* to allow him further time for payment of the note, and in conſideration thereof *B.* agreed to allow *D.* one guinea *per* month, and has actually paid one guinea *per* month for near three years; but nevertheleſs *D.* ſeveral times after ſuch new agreement acquainted the ſaid *A. C.* and *E.* that the note was not taken up, and they always deſired he would oblige *B.* to do it.

About ſix months ſince *D.* paid away the note to *J.* huſband to *D.*'s daughter, as part of her fortune, but he afterwards paid it to *D.* his father.

Since which *G.* who acts as attorney for *D.* pretends he has bought the note of *D.* and has brought an attachment of privilege againſt *A.* the drawer, and all the indorſees, except *D.* himſelf, and has actually arreſted *A.* thereon.

Query. Therefore as *D.* took *B.* for his paymaſter, by continuing to indulge him for three years and a half, after the note become due, at his inſtance and requeſt, (tho' often preſſed by the other party to ſue him) in conſideration of one guinea *per* month premium, Can he recover againſt *A.* the drawer, or the other indorſers at law? and if ſo, will not equity relieve him?

Opinion. I am of opinion, That as *A.* was the original debtor by his promiſſory note, and the money is not paid, he is ſtill liable to pay it, notwithſtanding *D.*'s continuing the money at *B.*'s requeſt, and for a premium given by *B.* I think, he cannot defend himſelf againſt the payment of it, either in law or equity, though *D.*'s agreement for the continuance of ſo extravagant a premiums, and accepting it accordingly, does, I think, ſubject him to the penalty for uſury, by the ſtatute of 12 *Ann. c.* 16. being treble the value; but if *A.* really never had the 100 *l.* it is probable that he may be relieved on payment of 100 *l.* and intereſt, only deducting the premiums by a bill in equity, with proper ſuggeſtions contrived to it, for a diſcovery of theſe premiums and

diſcounts, but ſo as to avoid the plea of it ſubjecting *D.* to a penalty; but this is upon ſuppoſition that *G.* has not paid a valuable conſideration for it, and is only a truſtee for *D.*

Query. Will *B.*'s and the other indorſors, being included in the attachment, prevent their giving evidence for *D.* in the cauſe againſt him, eſpecially as *B.* by being ſo, does not benefit himſelf, but, on the contrary, takes the debt upon himſelf?

Opinion. I think this will not take off the indorſor's evidence, unleſs they ſhould be joined in the declaration, which I don't ſee how can be.

Query. As the note is not indorſed by *F.* ſon-in-law to *D.* nor the note given to *G.* for fees, is not the attachment an improper writ, and can we not plead the want of ſuch indorſement, or the defectiveneſs of the writ in abatement to the action?

Opinion. If *G.* has not a legal title to the note by an indorſement, he cannot ſue at all, and then he will be nonſuited upon the trial; but if it ſhould appear to be indorſed at the trial, that will be ſufficient; but this is a defence to the merits, but not a proper plea for the writ.

October 16, 1733. *D. Ryder.*

CASE.

IN 1731, *W. P.* being to be ſworn in one of the officers for the county of *Middleſex*, *W. S.* and three other perſons gave a bond to *S. R.* and *F. P.* then ſheriffs of *Middleſex*, dated 28th *September*, 1731, in the penalty of 2000 *l.* for performance of the covenants in certain indentures referred to by the condition of the ſaid bond; and *J. S.* was appointed by the ſaid *R.* and *P.* their under ſheriff for the ſaid year.

On the 5th of *May*, 1732, a warrant was made out by the ſheriffs of *Middleſex* for arreſting one *B.* at the ſuit of Mr. *M.* and was directed to *S. T.* and the ſaid *W. P.* but was not delivered to *T.* and *T.* arreſted the defendant; but *P.* being at the door when *T.* arreſted him, *T.* prevailed on *P.* to take the priſoner to his houſe, till he could ſend for bail, and *P.* did ſo.

On *Sunday* evening the 9th of *May*, 1732, the priſoner forced open *P.*'s cellar window, and made his eſcape againſt *P.*'s conſent and knowledge: upon this *P.* got the Lord Chief Juſtice's warrant to retake him, and was at great expence for that purpoſe; but not being able to retake him, and the ſheriff being ſerved with a rule, to bring in the body, *W. P.* in 1732, paid to one Mr. *P.* 200 *l.* and he paid it over to the plaintiff's attorney, and thereupon plaintiff's attorney was ſatisfied, and ſtaid all proceedings againſt the ſheriff.

Soon

Soon after the payment of the 200 *l.* the plaintiff died, after which Mr. *P.* died, and on or about *June* laſt, the defendant was taken on the eſcape warrant, and ſent to *Newgate*, where he lately died.

That no proceedings have been had in the above affair ſince the payment of the 200 *l.* to plaintiff's attorney, now near five years ago, till *Michaelmas* laſt paſt, one *J. H.* a pretended attorney, but not admitted, filed a bill in the Court of Common Pleas againſt *S.* in the name of the ſaid *R.* and *P.* ſheriffs, for 2000 *l.* the penalty of the bond, pretending Mr. *P.* paid 100 *l.* part of the ſaid 200 *l.* to the then plaintiff's attorney out of his own pocket, to make an end of the affair, and *H.* inſiſts, though *S.* was named and acted as under ſheriff in every reſpect, yet he accounted with *P.* for the profits, and that *P.*'s executrix is entitled to have the benefit of the ſaid bond; whereas it is apprehended the plaintiff was really dead before any money was paid, and that thereby the cauſe was abated; but if that ſhould not happen to be the caſe, as the bond was given only to the high ſheriff for performance of articles in a certain indenture mentioned in the condition of the ſaid bond, which indenture was only to indemnify the high ſheriff from any eſcapes or damages, and as the plaintiff, as alſo Mr. *P.* and the defendant *B.* are all ſince dead, and Mr. *S.* not *P.* was the perſon who acted as under ſheriff, and conſequently neither the high ſheriff nor under ſheriff ſuffers, the widow and adminiſtratrix of *P.* has no right to ſue Mr. *S.* on the ſaid bond, eſpecially as by an affidavit annexed it appears this action has been brought without the conſent or direction of the ſaid *R.* and *P.* or *S.*

Opinion. The defendant is liable to forfeit the penalty of this bond on ſuffering *B.* to eſcape, and has no method at law to help himſelf, even although ſatisfaction hath been made to plaintiff's attorney, but his relief muſt be in equity.

R. Draper.

CASE.

E. C. widow and relict of *T. C.* and *F. C.* infant *per* prochein amy, *W. B. R. L.* and *E. ux'* *R. L.* jun. *J. S.* and *M. L.* infants, *per* prochein amy, *P. R.* and *S. ux. W. P. F. J.* and *M. R.* infant, plaintiffs, and *A. C.* widow, and executrix of *W. C. J. C. W. C.* infant, *per* guardian, defendants.

The bill ſets forth, That teſtator *W. C.* late father of ſaid *T. C.* and of plaintiffs of *E. L.* and *S. R.* and of defendant *J. C.* duly made his will, and afterwards a codicil, and having given ſeveral pecuniary legacies to his children, he deviſed to defendant *A. C.* all his copyhold, freehold, and leaſehold eſtates for life, and gave to her as long as ſhe ſhould live, the uſe of all his other perſonal eſtate, chargeable with the payment of ſaid legacies; and after her deceaſe deviſed all his freehold, copyhold, and leaſehold eſtates, to and amongſt his ſeveral children, and the reſidue of his perſonal eſtate, after his wife's death, he

gave to his four children to be equally divided between them, and that each of them ſhould pay each of ſuch ſhares to and amongſt their reſpective children born or to be born, equally to be divided between them as they ſhould reſpectively attain 21 years, or be married, and until ſuch time the ſame was to be put out at intereſt, and the ſame and the whole intereſt paid amongſt them, and no part applied to their maintenance and education, that being a duty incumbent on their parents, and thereby made ſaid *A.* his wife executrix and died.

Therefore that defendant *A. C.* may ſet forth an account of the perſonal eſtate, and that the money may be put out and ſecured, ſo as ſaid infants and others concerned therein may have their properties ſecured, and that ſhe may ſay what goods ſhe claims for her uſe during her life, and may depoſit the title deeds as the court ſhall direct, and to examine the witneſſes to the will and codicil, to perpetuate and eſtabliſh the ſame. *Is the Bill.*

The defendant *A.* the executrix, by her anſwer ſets out an account of the perſonal eſtate, but inſiſts, by the will there is a legacy of 300*l.* given to each of her four children, on condition that they ſhould execute a deed, waiving all right to the perſonal eſtate, under the cuſtom of *London*, and that ſhe paid them the ſaid legacies, yet they had not executed ſuch deed.

This cauſe was heard by conſent before his honour on the 18th *March*, 1731, when it was referred to Mr. *Holford*, to take an account of the perſonal eſtate come to the hands of defendant *A.* the executrix, in which account ſhe was to be allowed the *paraphernalia*, reaſonable funeral charges, and other juſt allowances, and was to declare by ſchedule what part of the goods and plate ſhe intended to retain, and was to have the uſe thereof accordingly for life, and the reſidue of the goods were to be ſold, and the money ariſing thereby, and what ſhould remain as the balance of the ſaid account, was to be put out on government ſecurities, with the approbation of the ſaid maſter in the name of ſaid executrix, who was to declare the truſt thereof for the uſes in the will, and the maſter was to look into the ſecurities, and if he found them good, the money was to remain thereon, or if improper, the money was to be called in and placed out again as aforeſaid, and the original deeds and writings were to be brought into court for the benefit of the parties intereſted therein; and ſuch of the legatees who had received their legacies, were to execute releaſes to ſaid executrix, purſuant to the directions of the will, and the parties were at liberty to apply for further directions, and to have the coſts out of the eſtate to be taxed by the maſter.

That ſince the decree defendant *A. C.* is dead, having made her will, and plaintiffs *R. L.* and *P. R.* ſenior executors, who have ſince proved the ſame.

That ſome of the directions in the decree now ſeem to be at an end, *viz.* as to the defendant's chuſing what goods ſhe would have *for her own uſe for life*, all being now to be ſold, and the money

placed out as aforeſaid) and likewiſe as to bringing the deeds and writings into court, the ſeveral contingent eſtates now falling into poſſeſſion of the ſeveral parties who are all of age, they ought to have their reſpective deeds delivered to them, and Mr. *L.* and *R.* are ready and willing to go on with the account, and put out the money as directed by the decree.

Query, 1*ſt*. Therefore, whether it will be ſufficient only to revive the ſuit? or whether a ſupplemental bill or bill of revivor muſt be prefered, and in either caſe who muſt be plaintiffs, and who defendants, and in what manner is it proper to be done?

Note, That the ſaid *T. C.* and plaintiffs *E. L.* and *S. R.* have all ſeveral children now living, but defendant *I. C.* who tho' married has no child, pretends he ought now to have a fourth of teſtator *W. C's.* perſonal eſtate except the leaſehold, or at leaſt the intereſt thereof paid to him, and although he has by the will a good eſtate in land, and that the perſonal eſtate is divided as near as may be amongſt the four children, for the benefit of their reſpective children, yet he at other times pretends that he will ſet aſide the will ſo far as it is contrary to the cuſtom of *London*, hoping thereby (as he has no children) to have his cuſtomary part to his own uſe, but as he has received his conditional legacy from the executrix, and is ordered by the decree to execute a deed, waiving all right to the perſonal eſtate by the cuſtom of *London*.

Query 2d. Whether this will not be a bar to him, or whether he can claim, or have his cuſtomary, or any other part, than what is left him by the will?

Query 3d. And poſſibly as it cannot be known whether *J. C.* will have children or not till after his death?

As the caſe now ſtands, whether one fourth of the perſonal eſtate after his death, will go to his executors, or be deemed a void legacy, and go among the other three children and their repreſentatives? or muſt it in any and what manner go amongſt the children of the ſaid *T. E.* and *S.* or whether *J. C.* in his lifetime can have this fourth part or the intereſt of it?

Opinion 1*ſt*. Two of the plaintiffs being the executors of *A. C.* the bill to be brought muſt be partly a bill of revivor, and partly ſupplemental, ſtating that ſpecial, and the bill ſhould be brought in the names of the other plaintiffs againſt the two executors, and their wives, and the defendants to the original bill, to revive the former ſuit and decree, and to carry it into execution.

2*d*. I am of opinion, that he is barred from claiming his cuſtomary part of the eſtate, or any other part inconſiſtent with the will, by his receipt of his conditional legacy, and by the decree.

3d. This

3d. This point is not clear, but from the will that the teſtator intended that his four children ſhould be only truſtees for their reſpective children, of the ſhares of the reſidue of his perſonal eſtate given to them reſpectively; and if that be the meaning of the will, if *J.* ſhould die without having any child, the truſt as to this fourth part will become lapſed, and I incline to think, it ought in that caſe to be divided in the ſame manner as it would have been if the firſt teſtator had died inteſtate as to this part, in the mean time *J.* hath a right to receive this fourth, ſubject to the truſts in the will.

June 1, 1732. *C. Talbot.*

CASE.

15th *Nov.* 1737. *J. C.* by his will, after giving ſeveral pecuniary legacies, deviſes and bequeaths all the reſidue and remainder of his goods, chattels, real and perſonal eſtate or eſtates whatſoever, and whereſoever, unto his two ſiſters *M. M.* and *E. S.* to be equally divided between them, ſhare and ſhare alike, and to their heirs and aſſigns, after payment of his debts, legacies, and funeral expences, and made his ſaid two ſiſters executors of his ſaid will, and they have proved the ſame.

Mrs. *M.* had at the time of making the will, and now has, a huſband and ſeveral children, and ſhe is doubious whether ſhe can diſpoſe of her ſhare of the ſaid real or perſonal eſtate; and if ſhe can, is willing to ſecure it to the children: Therefore,

Query. If ſhe can diſpoſe of her part and ſhare, how and in what manner will be moſt proper? Whether by deed in her lifetime, or by her laſt will and teſtament? If by deed, by what ſort of conveyance?

Opinion. As to the perſonal eſtate, I conceive that Mrs. *M.*'s ſhare of it veſts immediately in the huſband, and ſhe cannot diſpoſe of it. As to her ſhare of the real eſtate, her huſband will be entitled to it for life by the courteſy, in caſe he ſurvives her, and Mrs. *M.* cannot diſpoſe of, or make any ſettlement of it without the conſent of her huſband, and that muſt be done by deed and fine.

Query. If Mrs. *M.* ſhould die inteſtate, or before the eſtate is divided, will not her huſband be entitled to her ſaid ſhare of the real and perſonal eſtate, or who otherwiſe?

Opinion. Mrs. *M.* being a *feme covert*, cannot make a will; and in caſe of the death, her perſonal eſtate is abſolutely her huſband's, and he will be entitled to the real eſtate by the courteſy, as above, for life, and the reverſon will deſcend to her heir at law.

4th May, 1738. *Edw. Green.*

CASE.

CASE.

W. B. by his will, dated 18th *Auguſt* 1731, ſays, *Imprimis*, I give and bequeath all my meſſuages or tenements in *Holborn*, and my meſſuage in *Addlehill*, to be ſold by my executors hereafter named, and the money ariſing thereupon, after ſale thereof, to be paid and diſtributed to ſuch perſon and perſons that are in a certain ſchedule or paper hereunto annexed mentioned, revoking all other wills by me formerly made, do declare this to be my laſt will and teſtament, contained in this one ſheet of paper, and do nominate and appoint Mr. *M. I.* ſole executor thereof. In witneſs *&c.*

Note; The will has three witneſſes names to it, and appears to be ſigned and ſealed by the teſtator, but is of the hand-writing of the executor.

About eight or ten days after executing the above will, the teſtator made a paper to the effect following, and ſealed it; but no witneſſes are to that, and dates it of even date with his will.

A ſchedule that I make as part of my will for the diſpoſitions of the ſeveral ſums to the perſons hereunder mentioned upon my eſtate, mentioned in my ſaid will. *Imprimis*, I give to *M. B.* my ſervant, 20 *l.* a year, payable quarterly, out of the rents aforeſaid during her natural life. *Item*, I give to *M. R.* 5 *l.* *Item*, I give to *S. B.* upon marriage, 200 *l.* I order as much of theſe ſums to be paid out of my rents as can, till the eſtate can be ſold, and then I allow my executor to ſatisfy himſelf for all his care, trouble, and charge, and deſire him to diſpoſe of the remainder as he ſhall think fit, to charitable uſes, as to charity ſchools, or otherwiſe. I give all the furniture of my houſe to Mrs. *B.* my ſervant, except the writings in the ſcrutore, which belongs to my executor.

Auguſt 18, 1731. *W. Beaumont.*

The latter end of *October*, 1737, *M. B.* died, and the 10th *November* inſtant *W. B.* the teſtator died.

There is another will made ſo long ago as 1700, and by that he gives his eſtate to his younger brother, who is ſince dead without iſſue.

Mr. *S.* his heir at law, and alſo next of kin to the teſtator, and to his deceaſed brother, but was not known to either of them at the time of making the will, but the teſtator and he has been intimate ſince, and the teſtator on his death-bed, and two or three days before he died, declared the will was not to his mind, and that he would alter it.

The appointment of the executor is all interlined by the executor himſelf, and no memorandum made; it was done before execution, and the will is ſaid to be contained in one ſheet of paper: Therefore

Query 1ſt. Is the will itſelf ſufficient to carry the eſtate to the executor againſt the heir at law, eſpecially as the word *deviſe* is not uſed, nor any word of *inheritance*, nor is for payment of debts; and as the ſchedule was not annexed to the will at the time of executing it, is odly worded, and is not witneſſed by any perſon, though *it ſeems* to be teſtator's own hand-writing.

Opinion.

Opinion. There being no witneſſes to the ſchedule, and the ſchedule not being annexed to the will at the time it was executed, I am of opinion the will is void as to any freehold eſtate which may be affected by it; but in other reſpects there does not appear to be ſufficient objection againſt it.

Query 2d. Do not the words in the ſchedule that deſires his executors to diſpoſe of the remainder to charitable uſes, bring this within the mortmain act? If ſo, how much of the will will be good, and to whom will ſuch part that does not paſs by the will go?

Opinion. If the will were good in other reſpects, yet I think it would be void ſo far as it relates to charities to ariſe out of the lands.

Query 3d. As Mrs. *B.* died before teſtator's will, the houſehold goods and arrears of rent paſs to the charitable uſes under the word *remainder?* Or is that confined to the monies ariſing by ſale, ſo as to carry thoſe goods, and all arrears of rent to the next of kin, as an undiſpoſed part of the perſonal eſtate?

Opinion. The will is very dark in this particular; but I think the goods will go to the charity under the bequeſt of the reſidue; but I cannot ſay that this is a clear caſe.

Query 4th. Suppoſing the legacy to Miſs *B.* good, does it veſt ſo as to go to her executors or adminiſtrators, if ſhe dies before marriage, or to carry intereſt in the mean time?

Opinion. It never veſts, nor can it go to executors, if ſhe dies before marriage, nor will intereſt be allowed till ſhe marries.

Query 5th. A caveat is entered in the prerogative court againſt proving the will; will it be of any prejudice to the heir at law to withdraw it, and permit the will to be proved in the prerogative court?

Opinion. Whether the will be proved or not, the heir at law cannot be affected, nor will the caveat or withdrawing it be of any conſequence to the heir at law as to the real eſtate.

Query 6th. Upon the whole caſe, what method is proper for Mr. *S.* to take to get into poſſeſſion of the eſtate, and to ſet aſide the will?

Opinion. Mr. *S.* muſt bring an ejectment, there not appearing any legal incumbrance in the way of his legal title.

29th *December*, 1737. *H. Lazackerley.*

CASE.

CASE.

T. A. by his laſt will, dated 19th *Auguſt*, 1709, deviſed as follows: *Item*, I give and bequeath unto my dear and loving wife *M.* and her aſſigns, all thoſe my meſſuages, tenements, and hereditaments, with the appurtenances, ſituate in *Blackfriars*, *London*, which I lately purchaſed of *S. C.* Eſq; to hold to her and her aſſigns, for and during the term of one year, to commence from that, of the four moſt uſual quarterly days in the year, which ſhall happen next after my deceaſe, and from and immediately after the expiration of the ſaid term of one year, to commence as aforeſaid, I give and deviſe the ſame premiſes in *Blackfriars* unto and amongſt all and every the children of my brothers and ſiſters as ſhall be living at the time of my deceaſe, and their heirs reſpectively, in equal ſhares and proportions; and my mind and will is, that my niece *A. A.* daughter of my brother *W. A.* ſhall have ten pounds *per annum* during the term of her life out of the ſaid eſtate; and my mind and will is, and I do hereby direct, and appoint that my loving brother *J. A.* and *E. S.* and the ſurvivor of them, ſhall receive and take the rents, iſſues, and profits of the ſaid premiſes in *Blackfriars*, until my nephews and nieces ſhall have reſpectively attained the age of twenty one years, or days of marriage, and apply the ſame towards their ſupport, maintenance, and education; and by the ſaid will gives the reverſion of the freehold houſes in the *Strand* after the death of his wife to *T. A.*

The teſtator ſoon after died, and his widow poſſeſſed the eſtate till the year elapſed, and ever ſince the truſtees have applied the rents and profits of the eſtate according to the will.

The widow refuſes to deliver the writings of the ſaid *Blackfriars* eſtate to the deviſees or truſtees.

Query. Whether a court of equity will not, as her eſtate was determined in the premiſes in one year after her huſband's death, compel her to deliver up the writings either to the deviſees or legatees.

Opinion. I think a court of equity will oblige the widow to deliver thoſe writings to the deviſees, if of age, or to their guardians, if under age.

Query. As to the reverſion of the eſtate in the *Strand*, whether the ſaid court will not compel the ſaid widow and executrix to let the ſaid *T. A.* have inſpection and copies of the writings, he wanting to diſpoſe of the ſame, ſo far as to ſatisfy the purchaſer?

Opinion. I conceive that *T. A.* has a right to inſpect thoſe writings, and to have them depoſited in court, or in ſome third hand, for the equal benefit of himſelf and the deviſees for life, and to take copies of them, if he thinks fit, and that the court will decree it accordingly.

Query. Several of the children having died ſince the expiration of the one year that the executrix held the ſaid eſtate after teſtator's death, if their ſaid ſhare of the ſaid eſtate was not ſo veſted in them as that their ſhare deſcended to the heir at law of the party ſo dying, and not to be divided amongſt the ſurviving children.

Opinion. I think that the brothers and ſiſters took by this deviſe ſeveral eſtates as tenants in common, and not as joint-tenants, and therefore that their reſpective ſhares deſcended on their deaths to their reſpective heirs, and did not ſurvive to the reſt of the ſurviving brothers and ſiſters.

November 15, 1726. *Dudley Ryder.*

CASE.

THE plaintiffs are merchants at *Leeds* in *Yorkſhire*, the defendant lives in *London*, and trades in woollen cloth; the plaintiff *H.* about *October* 1736, applied to the defendant, and requeſted he would deal with them rather than with one *B. C.* who lived at *Leeds*, with whom the defendant then dealt; and to induce defendant ſo to do, he ſaid that *C.* was not in circumſtances to give any large credit, but that they were able, and would give 12 months credit; to which the defendant replied, he deſired only the uſual credit, whereupon the ſaid plaintiff *H.* replied, that is ſix months, and deſired the defendant would give an order for ſome goods, and he would give ſix months credit; upon this the defendant gave an order for goods, in the invoice mentioned, of ſorts of which they ſhewed him a ſample, and they ſent the goods to defendant's order in *Holland.* The goods did not anſwer the ſample. Although the goods were not delivered till the latter end of *November* 1738, yet on or about the 18th day of *October*, 1738, they arreſted the defendant. The defendant has a witneſs to prove that the plaintiff *H.* ſaid he would ſend the goods, and give ſix months credit, tho' he has declared, that the defendant was indebted *&c.* the 18th *October* 1738, which was not a month from the buying; and it is not certain the goods were then delivered in *Holland.* Some of the defendant's witneſſes can prove the goods did not anſwer the ſample, and that they were ſhort of the proper meaſure in *Holland.*

Query. It is ſaid by the cuſtom of the city of *London*, any perſon may arreſt another, and hold him to bail before the day of payment; but in that caſe they muſt ſue out another writ after the day of payment is elapſed, and declare on the laſt writ; and that to declare on the firſt, which the plaintiffs have done, is wrong: is that ſo? and have the preſent plaintiffs, who live at *Leeds*, that privilege? If not, are they not liable to an action for falſe impriſonment.

Note; The defendant would willingly keep off payment till *Michaelmas* term, if poſſible.

Opinion

Opinion. I am of opinion, that if the defendant can prove that thoſe goods were ſold for ſix months credit, and the declaration is before the expiration of thoſe ſix months, the plaintiffs muſt fail in this action, and defendant muſt plead the general iſſue, and give this in evidence.

R. Draper.

CASE.

MRS. *E. T.* being ſeized in fee of five acres of freehold land, on a treaty of marriage with one Mr. *T. P.* by leaſe and releaſe, dated 10th and 11th of *January*, 1688, made between the ſaid *E. T.* of the firſt part, *R. T.* and *J. T.* of the ſecond part, and *T. P.* of the third part, for the ſettling, diſpoſing, and limiting the ſaid five acres, to ſuch uſes, intents, and purpoſes as therein aftermentioned, did grant, releaſe, and confirm the ſaid premiſes, unto the ſaid *R. T.* and *J. T.* and their heirs, to hold to them, their heirs and aſſigns for ever; from and after the ſaid marriage, the ſame to the uſe of the ſaid *T. P.* and the ſaid *E.* his intended wife, and the ſurvivor of them, during the natural life of the ſaid *T. P.* and from and after the deceaſe of the ſaid *T. P.* to and for the uſe and behoof of ſuch perſon and perſons, and for ſuch eſtate and eſtates as the ſaid *E.* at any time after her ſaid intended marriage ſhould, by writing under her hand and ſeal, in the preſence of three or more credible witneſſes, direct, limit, or appoint; and for want of ſuch direction, limitation, or appointment, to the uſe of the ſaid *E.* and her heirs, from and after the deceaſe of the ſaid *T. P.*

Soon after the ſaid marriage took effect, and by leaſe and releaſe, dated 19th and 20th *November*, *anno* 2 *W. & M.* 1690, made between the ſaid *T. P.* and *E.* his wife, of the one part, and *E. F.* and *T. O.* of the other part, the ſaid *T. P.* and *E.* his wife, for the ſetling, diſpoſing, and limiting the ſaid five acres of land, to ſuch uſes, intents, and purpoſes as therein after is mentioned, did grant, releaſe, and confirm the ſaid premiſes to the ſaid *E. F.* and *T. O.* and their heirs, to hold to them, their heirs and aſſigns for ever, to the uſe and behoof of the ſaid *T. P.* and *E.* his wife, during their natural lives, and the life of the longer liver of them; and from and after both their deceaſes, then to the uſe and behoof of the heirs and aſſigns of the ſaid *T. P.* for ever, with a covenant from the ſaid *T. P.* and his wife, in the ſaid *Michaelmas* term, to levy a fine, *de droit come ceo qui &c.* which fine was to enure, and the ſaid *E. F.* and *T. O.* and their heirs, were to ſtand ſeiſed of the premiſes, to the uſes as in the ſecond deed, and in *Hilary* term following, a fine was levied accordingly.

In 1702, *P.* firſt mortgaged and afterwards ſold the ſaid five acres for a valuable conſideration, ſubject to his wife's eſtate for life, and it has ſince been ſold to others, and another fine levied, and Mrs. *P.* is ſtill living, but never inſiſted on more than an eſtate for life till lately.

N. B. By the firſt deed before marriage, the five acres are veſted in the two *T*—'s. their heirs and aſſigns, to the uſes therein mentioned; and by the ſecond deed executed by the huſband and wife, who was a feme covert, and compelled to execute the ſame by threats, as ſhe is ready to ſwear, if her oath could be admitted, and both only tenants for life, with power to the wife to direct, limit, or appoint as above ſtated, the premiſes are granted to *F.* and *J.* in fee, to the uſe of *P.* and his wife for life, and to the longeſt liver, and after their deceaſes, to the heirs and aſſigns of the ſaid *T. P.*

Note likewiſe, That the power reſerved in the firſt deed is to ſuch perſons as the wife, by any deed or deeds, atteſted by two witneſſes, ſhall direct, limit, or appoint; and this limitation *&c.* not being to take place till after the death of both huſband and wife.

Query 1ſt. Will the words *(to the heirs and aſſigns of* P.*)* be a ſufficient deſcription of the perſon that is to take after the deceaſe of the ſaid *P.* and his wife?

Opinion. I conceive that the limitation to the heir of *P.* was good, and that the heir of *P.* after the death of him and his wife, might have taken, if nothing further had been done by *P.*

Query 2d. Will the laſt deed, executed in the manner above ſtated, be deemed, either in law or equity, a proper execution of the power in the wife, reſerved by the firſt deed.

Opinion. I am of opinion, the leaſe and releaſe, executed after the marriage, was a good execution of the power; but if not, there is no doubt, but thereby, and by the fine, the ſame was well ſettled in the manner it is there done.

Query 3d. How far will the fine operate, the freehold being veſted in the two *T.*—'s. and their heirs.

Opinion. The freehold was not in the two *T.*—'s, but if it had remained in them, the fine would have extinguiſhed the powers reſerved to the wife by her marriage ſettlement, and have barred the remainder in fee, limited for want of appointment.

April 12, 1739. *W. Melmoth.*

CASE.

A. B. ſpinſter, having forfeited her virtue, became afterwards acquainted, amongſt others, with *C. D.* and he taking a particular liking to her, voluntarily gave her a bond in 500 *l.* penalty, for payment of *an annuity of 21 l.* to her and her heirs for ever: but, ſome time af-

terwards, reflecting it would be a perpetual *lien* upon him, he prevailed on *A. B.* to give it up, and to accept in lieu thereof another bond in the ſame penalty, for payment of 21 *l.* a year for her life only, a coppy of which is annexed.

The bond in queſtion was drawn by a clergyman, a friend of *C. D.*'s. and the words (*yearly, and every year, during the natural life of the ſaid* A. B.) are interlined with *C. D.*'s own hand writing.

A. B. inſiſts the words were interlined before the execution, and that ſince the execution it was never in the cuſtody of *C. D.* and one of the ſubſcribing witneſſes will teſtify the ſame. On the other hand, *C. D.* inſiſts the interlineation was made after the execution, and not re-executed, and conſequently, that tho' ſuch interlineation be of his own hand, he can plead *non eſt factum* to it; and if that ſhould fail him, as it was given without any conſideration, equity will relieve him againſt it.

Query. *A. B.* is ſince married to *E. F.* therefore is an action at law maintainable on the above bond? and if ſo, muſt it be brought in the name of *E. F.* and *A. B.* his wife, or only in the name of her huſband?

If the ſubſcribing witneſſes to the bond prove the execution of it, and both ſhould be not able to ſay whether there was any interlineation or not, will *C. D.* at law be allowed to bring any other witneſſes to prove the interlineation was after the execution of the bond? and if he ſhould bring any ſuch witneſſes, will it avail him, as the interlineation is of his own hand-writing? or will equity relieve *C. D.* againſt it, as a bond given without a conſideration, or for any other, and what reaſon?

Opinion. I am of opinion, that an action at law may be maintained in the name of *E. F.* and *A. B.* his wife; and I think it will be preſumed, that the interlineation was made before the execution of the bond, and the rather becauſe it is made with the proper hand-writing of *C. D.* and if one of the witneſſes proves the fact to be ſo, it will very ſtrongly confirm the preſumption, and require a very ſtrong proof on the other ſide to contradict it: but, on the contrary, if he can prove that this interlineation was wrote after the execution, (tho' with his own hand) and this proof ſhould be more ſatisfactory to a jury than that given in favour of *A. B.* undoubtedly it will avail *C. D.* in an action upon the bond, and upon the oyer of it the words *interlined* ſhould be omitted, yet if the interlineation be after the execution, and with the privity and conſent of *A. B.* the bond is altogether void; but if it was done by any clandeſtine means, without the privity of *A. B.* I think it would not avoid it as a bond without the interlineation; but that will make the bond of ſmall value.

I do

I do not ſee any facts ſtated which can be ſufficient grounds for relief againſt this bond in a court of equity.

31ſt *December*, 1735. *N. Fazakerley.*

CASE.

T. R. and *J. M.* mariners and merchants, in *January* laſt, took up divers ſums of money, on their joint and ſeparate bottomry-bond, and agreed that the money ſhould be inveſted in goods and merchandize on their joint account, and that ſuch merchandize ſhould be ſold in the *Eaſt Indies* with their joint conſent, for the beſt price that could be got for the ſame, and if either ſold without ſuch joint conſent, the party ſo ſelling to bear any loſs that ſhould happen thereby. The money ariſing by the ſale was to be returned to *England* by the firſt conveyance, to diſcharge the joint and ſeparate bond.

T. R. one of the parties, is now under arreſt for a ſeparate debt, and poſſibly may have a commiſſion of bankruptcy ſued out againſt him.

Query 1ſt. Therefore, ſuppoſing a commiſſion ſhould be ſued out, muſt not the joint effects be firſt applied in paying the joint creditors? and will not the joint creditors come in equally with *T. R.*'s ſeparate creditors to a dividend of his ſeparate effects?

Opinion. If a commiſſion of bankruptcy be ſued out againſt *T. R.* I apprehend that the joint effects will be firſt liable to pay the joint creditors; but in caſe a ſeparate commiſſion is ſued forth againſt *T. R.* his joint creditors will not be let in to have a rateable ſatisfaction out of his ſeparate eſtate with his ſeparate creditors; but can be ſatisfied out of the ſurplus of his ſeparate eſtate, if there be any ſurplus thereof.

Query 2d. Can *J. M.* ſafely ſell the effects without conſulting *T. R.* if he ſhould not go the voyage? and may he ſend over and diſcharge the joint bonds, purſuant to the articles, ſafely and without prejudice?

Opinion. As the articles are founded upon an agreement between *T. R.* and *J. M.* to trade to the *Eaſt Indies*, and to diſpoſe of the merchandizes there, if *T. R.* ſhould be hindered from going, I think *M.* may ſafely ſell the partnerſhip effects in like manner as if *T. R.* had died, without conſulting him, and may ſend over and diſcharge the joint bonds; the conſent muſt be underſtood to be in caſe the other was at hand to give or refuſe it.

Query 3d. If the joint creditors ſhould agree to give up the joint bond, and take *J. M.*'s bond for the goods bought in partnerſhip, would that prevent a moiety of the produce of ſuch goods being

being conſidered as *T. R.*'s effects, or ſubject to a diſtribution among all his creditors?

Opinion. I apprehend that if the joint bonds are given up, that it ought not to prejudice *T. R.* or the aſſignees under any commiſſion of bankruptcy againſt him, unleſs *T. R.* not being a bankrupt, will conſent thereto: but if he has committed any act of bankruptcy, it will not be adviſable to take up the bond.

9th *March*, 1737. *Fran. Cepper.*

CASE.

AND it is further agreed, by and between the ſaid parties to theſe preſents, that the ſaid *J. S.* his heirs and aſſigns, ſhall and will, before the expiration of this preſent demiſe, at the reaſonable requeſt of the ſaid *A. R.* his executors, adminiſtrators, and aſſigns, renew, lett, and demiſe, the within mentioned premiſes, unto the ſaid *A. R.* his executors, adminiſtrators, and aſſigns, for any term or time, not exceeding twenty-one years, under the ſame rents, covenants, proviſos, and agreements, as are herein mentioned. Therefore,

Query. Whether it is not adviſable for Mr. *R.* to execute a counterpart of a leaſe *mutatis mutandis* as the laſt, and tender that to *J. S.* and demand of him to execute a leaſe purſuant to the above covenant, and whether it muſt not be dated now to commence from the expiration of the old leaſe, which is *Michaelmas* next, and whether the covenant above mentioned ought not to be left out of the new leaſe? and muſt Mr. *R.* determine now for what certain term he will have it made?

Opinion. I am of opinion, that Mr. *R.* ought firſt to tender a leaſe of the ſame tenor and purport exactly, and with the ſame covenants as this leaſe to Mr. *R.* ſave and except the covenant for a further leaſe, and ſave and except the term to be mentioned in the leaſe to be tendered; and in caſe ſuch leaſe ſo to be tendered is refuſed, the proper way for Mr. *R.* will be to bring a bill in equity for a ſpecific performance of this covenant to make a further leaſe.

7th *July*, 1738. *Rob. Fenwick.*

CASE.

A. Being a gentleman of fortune in the country, deſired *B.* who was coming to *London*, to bring down an agreeable woman to him when he returned. *B.* prevailed on *C.* to go down with him to *A.*'s country ſeat, where ſhe arrived the 27th of October, 1725, and cohabited

cohabited with *A.* at times till the 15th *November* following, and then returned to *London*.

9th *April*, 1726, *C.* by letter acquainted *A.* ſhe was with child by him, and requiring a maintenance, *A.* thereupon employs a friend in town to enquire into the truth of it, and if ſhe proved ſo, and would ſwear it on him, to provide for them. *A.*'s friend accordingly acquainted *C.* therewith, but ſhe refuſed to do it; and 2d *June* following, one of the pariſh officers writes to *A.* in *C.*'s name, and there ſhe threatens to viſit him in the country, and to expoſe him to his wife *&c.* unleſs he forthwith provided for her: upon this *A.*'s friend, by his order, again attended, and made the ſame offer as before; but ſhe ſtill refuſed to ſwear the child to him; and being aſked what would ſatisfy her, ſhe ſaid ſhe thought he might give her one hundred guineas. About the 20th of the ſame *June*, *A.*'s friend took her up by a juſtice's warrant, to give ſecurity, or ſwear the child, and then ſhe refuſed to ſwear the child till ſhe had conſulted with the pariſh officer before mentioned; and upon his telling her ſhe muſt be conveyed to the pariſh where ſhe had a ſettlement, or ſwear the child, ſhe then ſwore it on *A.*

Upon this *A.*'s friend appointed a day for meeting the reſt of the pariſh officers, to agree with them for keeping her and the child, in caſe ſhe ſhould prove to be pregnant, and accordingly they met at the time appointed; but, inſtead of appearing, ſhe thought fit to quit the pariſh, and ſecrete herſelf, and, it is preſumed, by the before mentioned officer's advice, who was a particular friend to her through the whole affair.

Note; She was a perſon of a looſe character before ſhe went down to *A.* as well as after, and frequently viſited by the ſaid officer; but nevertheleſs it is apprehended ſhe was not even pregnant at the time the ſeveral letters aforeſaid were wrote, and that it was purely a contrivance between *C.* and her friend to get money out of *A.*

Query. Therefore, whether *A.* cannot indict the officer as a confederate with *C.* and oblige him to produce her? or what other remedy is proper to bring him and her to juſtice?

Opinion. As this caſe is ſtated, there ſeems to be a contrivance and confederacy between *C.* and the pariſh officer, falſely to charge *A.* to be the father of a baſtard child, and to extort money thereby from *A.* This, I conceive, is an offence indictable, for which both *C.* and the pariſh officer may be indicted: Alſo I think this matter proper to be laid before a juſtice of peace, who may examine into the ſame, and bind over the officer to the next quarter-ſeſſion, or ſeſſions of the peace, to anſwer ſuch confederacy and miſdemeanor.

J. Raby.

CASE.

CASE.

C. N. citizen, and barber ſurgeon of *London*, in his life time placed out the ſum of 50 *l.* in the name of *S.* his daughter then an infant, and for ſecuring the repayment thereof, a mortgage of certain leaſehold lands was made to her, her executors, adminiſtrators, and aſſigns.

The ſaid *S. N.* in 1727, intermarried with *J. M.* citizen and ſilk thrower of *London*, and on ſuch marriage *C. N.* entered into articles to give her 600 *l.* fortune, and her huſband agreed to leave 1200 *l.* to her if ſhe ſurvived him.

The ſaid 50 *l.* above mentioned, was never mentioned to the huſband, but ſince his wife's death, he finds ſhe received the intereſt both before and after her marriage, and has given one or more receipts for ſuch intereſt in the name of *M.* but the mortgage remained in the hands of a third perſon.

About the 12th *May*, 1728, *S. M.* died, leaving one daughter named *S.* now an infant of the age of —— years.

In 1732, *C. N.* made his will, in the words following; I give, deviſe, and bequeath unto my loving wife *S. N.* all and ſingular my real and perſonal eſtate, whatſoever and whereſoever, after my juſt debts and funeral expences are thereout firſt paid and diſcharged; to hold the ſame unto her the ſaid *S. N.* for and during the term and of her natural life, and from and immediatelyafter her deceaſe, I give, deviſe, and bequeath my ſaid real and perſonal eſtate unto my granddaughter *S. M.* ſpinſter, and to her heirs, executors, adminiſtrators, and aſſigns for ever, and of his will appointed *S.* his wife executrix, and ſoon after died without altering the ſame.

S. the widow proved her huſband's will, and poſſeſſed herſelf of his eſtate, and among other things of the mortgage to *S.* her daughter, and four *Eaſt India* bonds, and ſince his deceaſe with money received in diſcharge of debts owing to the teſtator, purchaſed four other *Eaſt India* bonds, and hath received the intereſt of the ſaid eight *Eaſt India* bonds, ever ſince her huſband's death, and hath applied the ſame to her own uſe.

She having ſome time ago loſt or miſlaid the aforeſaid eight *Eaſt India* bonds, the company have granted her new bonds, which ſhe hath taken in her own name, ſo that they will not appear to be any part of the teſtator's eſtate, and they pay the intereſt of the *new bonds* as they did of the old ones, but they at preſent keep the bonds in their own cuſtody, by way of ſecurity againſt the bonds loſt.—The executrix has nevertheleſs taken upon herſelf by deed, to aſſign the *bonds &c.* to truſtees upon truſts, contrary to the teſtator's will, and it is apprehended ſhe has ſpent ſome part of the principal of the teſtator's eſtate.

Mr. *M.* ſince his wife's death being informed of the ſaid mortgage, has demanded it of the executrix, and being informed of the ſaid deed of truſt, and knowing her to be in low circumſtances, has alſo requeſted her to give ſecurity that the ſaid *Eaſt India* bonds, and

other the teſtator's perſonal eſtate ſhall not be embezzled, but after her death ſhall come to his daughter *S.* according to her grandfather's will; but with regard to the mortgage, *S.* the executrix, inſiſts that as *S.* her daughter was an infant, it cannot be ſuppoſed the 50 *l.* lent thereon was her money, and that conſequently it muſt be the teſtator's, and if ſo, though taken in her name ſhe muſt be conſidered only as a truſtee for her father, and that therefore ſhe as executrix to him, has a right to keep the poſſeſſion of the mortgage, and to call in the money thereby ſecured, and to apply it to her own uſe: whereas Mr. *M.*'s ſaid wife had ſeveral ſums given to her during her infancy, and her father the teſtator improved them, at leaſt placed them out on the mortgage in queſtion for her benefit; and it can hardly be ſuppoſed he would have taken a mortgage in an infant's name IN TRUST for himſelf, who could not declare that truſt, nor aſſign that mortgage if called in; and beſides, as ſhe received the intereſt before her marriage, and afterwards too when ſhe had left her father, and gave receipts for it in the name of *M.* and for any thing appears to the contrary applied it to her own ſeparate uſe; her father never would have ſuffered it, had it not been her own property, and kept in her father, or ſuch third perſon's poſſeſſion, the better to conceal it from her huſband. Therefore,

Query. As Mr. *M.* is adminiſtrator to his wife, and the mortgage is ſtill in her name, will not the deed alone be ſufficient evidence of Mr. *M*'s. right, unleſs the executrix of Mr. *N.* by poſitive evidence ſhews it was a truſt only; and if it be his right, what method is adviſeable for him to take to get poſſeſſion of the deeds and premiſes?

Opinion. I am of opinion, that Mr. *M. prima facie*, is well entituled to this mortgage; firſt, as it was made in the name of his wife; ſecondly, as ſhe received the intereſt; and thirdly, from the nature of the tranſaction, as 'tis very probable Mr. *N.* the father, might make a gift of this value to a daughter: and 'tis very improbable he ſhould take a truſt mortgage in an infant's name, who could not aſſign or execute the truſt, as is properly obſerved by the caſe. Therefore, upon the whole there appears to me very ſtrong evidence, that this mortgage was originally taken the proper uſe and benefit of the daughter, and does now belong to her huſband; and as to the daughter's not having the poſſeſſion of the deed, that ſeems to me well accounted for, it being intended that ſhould remain as a private fund for the daughter's uſe, for which reaſon, it was proper to conceal it from the huſband. The method to obtain poſſeſſion of this mortgage is, for Mr. *M.* to file a bill in *Chancery* againſt the executrix, (ſtating his caſe there to the effect it is here) and to pray a diſcovery of the tranſaction, and that the mortgage deed may be delivered up to him, and that the arrear of it may be paid to him; upon which bill I apprehend the plaintiff will obtain relief.

Query. The widow and executrix of *C. N.* ſays that the eight *Eaſt India* bonds, and other the perſonal eſtate of *C. N.* ſhall be forthwith coming at her death; but ſhe inſiſts ſhe is not compellable by law or equity to give any ſuch ſecurity, being an executrix; ſhe alſo inſiſts as her huſband was a freeman of *London*, (ſhe can notwithſtanding her having proved his will) waive the benefit of it, and come in for her ſhare of his perſonal eſtate, as a freeman's widow; her ſhare, ſhe inſiſts, is half, as his daughter *M.* died before him, though the ſaid *M.* has a daughter *S.* ſtill living. Therefore as ſhe is in low circumſtances, and has taken on her to make ſuch deed of truſts, will not a court of equity oblige her to give ſecurity, that the *Eaſt India* bonds and other perſonal eſtate ſhall be forthwith coming at her death, or order them to be depoſited in the bank, and ſhe to receive the intereſt during her life: and can ſhe now, as ſhe has proved the will, and diſpoſed of part of the perſonal eſtate, and actually received the intereſt and produce of the ſame, ever ſince the teſtator's death, for her own uſe, refuſe to abide by the will, and reſort to the cuſtom of *London*, and claim her ſhare of the principal as a freeman's widow, eſpecially as ſhe has proved the will ſince the late act of parliament, that enables citizens to diſpoſe of their eſtates, *&c.* and if ſo, what ſhare will ſhe be intitled to, and will not Mr. *M.* be intituled to the reſidue as huſband and adminiſtrator to his late wife, in his own right, or will his child be intituled to the ſame? and if the latter, can the widow and executrix of *C. N.* by aſſigning to truſtees, or otherwiſe, prevent Mr. *M.*'s receiving it for the benefit of his daughter: and upon the whole circumſtances of this caſe, what method is moſt proper for Mr. *M.* to take to gain poſſeſſion of the mortgage deeds and premiſes, and alſo to ſecure his daughter's, and his intereſt, in the *Eaſt India* bonds and other perſonal eſtate?

Opinion. If the widow has not waived her title to her huſband's perſonal eſtate, ſhe by the ancient cuſtom of *London*, is intituled to one moiety of her deceaſed huſband's perſonal eſtate, beſides an allowance of her widow's chamber, which is uſually a 40th part, ſo as it exceeds not 50 *l.* in the whole. But I am inclined to think, that by proving the will, and acting under it for ſo long a time as is mentioned in the caſe, the widow has waived her title under the cuſtom, and ſubmitted to abide by the will; and that ſhe cannot now ſet the ſame aſide as void and againſt the cuſtom, as otherwiſe ſhe might have done. And therefore as by the will ſhe has only the uſe of the whole perſonal eſtate during her life deviſed to her; and as the ſame is deviſed by the teſtator to his grand-daughter after her deceaſe; I am of opinion, that a court of equity upon a bill exhibited by the grand-daughter by her next friend, (ſtating the caſe to the effect it is here) will either compel the executrix to put in good ſecurity for the ſame in favour of the grand-daughter, according to the deviſe, or will direct

the truſt eſtate to be brought into court, to be depoſited into the bank, to be preſerved for her uſe, 'till it ſhall become payable to her according to the will, eſpecially, as the widow is but in low circumſtances, and is likely to embezzle the eſtate, has actually loſt the *Eaſt India* bonds, and has taken others in her own name. And alſo as ſhe by deed of truſt, has thought proper to diſpoſe of the eſtate, contrary to the diſpoſition thereof by her huſband's will, as the bonds are in the poſſeſſion of the company, I am of opinion they muſt be made parties to the bill. Neither Mr. *M.* the huſband, nor his daughter, as Mr. *M.*'s wife died before her father, are intituled to any part of his perſonal eſtate by the cuſtom of *London*, the cuſtom not extending to grand-daughters.

If Mrs. *N.* could not reſort to her cuſtomary claim, (which is a moiety of her huſband's perſonal eſtate, and her chamber, as I obſerved before) the reſidue of the eſtate would go to the grand-daughter as next of kin to Mr. *N.* the teſtator, and not to Mr. *M.* her father, either by the cuſtom of *London*, or the ſtatute made for the diſtribution of inteſtates eſtates, Mrs. *M.* dying, as is before taken notice of, in the life time of her father.

February 29, 1735. *Sim. Urlin.*

CASE.

29th *Dec.* 1727. *T. L.* eſq; by his will of that date, gives 50 *l.* to and for the uſe and benefit of the poor of *Great* and *Little Sheppey*, to be raiſed out of his real and perſonal eſtate, and laid out in the purchaſe of lands by his executors, as ſoon as conveniently might be. The ſaid lands to be conveyed to his executrix, and her heirs, IN TRUST for that purpoſe only, and gives ſeveral other pecuniary legacies, and deviſes all his houſes in *Great Sheppey* particularly named, and the lands thereto belonging, to his daughter *L. H.* for life; remainder to her ſon *T. H.* and his heirs.

Provided the ſaid *T. H.* ſhall, within ſix months after his mother's death, pay unto *C.* and *L. H.* 300 *l.* between them, and in default of payment of the ſaid 300 *l.* he deviſes the ſaid premiſes to *W. W.* eſq; and *E. R.* and their heirs in truſt for the ſaid *C.* and *L.*

Gives unto *W. W.* and *R. H.* and their executors, *&c.* the rectory and manor of *Baxterley*, and a houſe in *Coventry*, with the appurtenances, and all ſums of money owing to him at his death, upon mortgage, bond, note, or otherwiſe: Upon truſt that they apply the rents and profits of the ſaid rectory, and of the ſaid mortgage, and place at intereſt all the ſaid monies, to and for the ſole uſe and behoof of the children of his daughter *L. H.* living at her death, their executors, and aſſigns.

Provided always and upon condition, and upon this further truſt, *That in caſe his daughter I. F.* ſhould ſurvive her then huſband, but not otherwiſe,

otherwiſe, that then the ſaid *W. W.* and *R. H.* their heirs and executors, ſhould raiſe and pay out of the laſt mentioned premiſes, unto his daughter *I. F.* during her life only, the yearly ſum of 20 *l.* by half yearly payments. But if ſhe or any perſon in herright ſhould controvert either of the ſettlements by him made, on the marriage of his two other daughters, then the payment of the yearly ſum of 20 *l.* to ceaſe. And the will contans theſe words *viz.*, that the ſaid *W.* and *H.* ſhall ſell the ſaid rectory and h uſe (if neceſſary) and apply the money and all the ſaid principal ſums of money to and for the uſes, and in like manner as they might apply the rents and profits of the ſaid rectory and houſe, and the intereſt of the ſums of money.

Gave his ſon in-law *J. F.* and the ſaid *I.* his wife, 20 *l.* to buy them mourning, to be paid ſix months after his the ſaid teſtator's death.

And as to all and every his houſhold goods, furniture, cattle and ſtock, his will was that his daughter *L.* ſhould have the uſe thereof for her life, and after her death gave the ſame to her ſon *T. H.*

And as to all the reſt and reſidue of his real and perſonal eſtate not before deviſed, he gave the ſame to his daughter *L.* her heirs and executors, *&c.* for ever; and then goes on in theſe words: But my will and expreſs mind and meaning is ſo, I do hereby declare, and order that my debts, legacies, and funeral expences ſhall in the firſt place be paid, anſwered, and diſcharged by my executrix, at her diſcretion, out of my money, ſtock, and perſonal eſtate, and then the reſt and reſidue thereof ſhall ſo be appropriated, and applied, as I have above directed.

Makes his daughter *L. H.* executrix of his will.

Mrs. *H.* has paid all the legacies given by the teſtator's will.

The rectory and manor of *Baxterley*, and houſe in *Coventry*, given to Mr. *W.* and *H.* upon the truſt aforeſaid, have not been ſold. The rectory and manor yield no profits, and it does not appear that the teſtator was ſeized or poſſeſſed of any houſe in *Coventry*.

Mrs. *H.* has got in and received all the money owing to the teſtator at his death, and paid Mrs. *F.* her ſaid annuity of 20 *l.* ever ſince the death of her huſband, and all the ſaid monies owing the teſtator at his death have been applied in making ſuch payments.

Mr. *H.* is dead, and Mr. *W.* has not acted in the truſt, and the ſaid rectory remains unſold. The incumbent thereon is 50 years of age or thereabouts, and it is apprehended the ſame would now ſell for 60 *l.* and no more.

Mrs. *H.* having applied the ſum of 315 *l.* part of the monies owing to the teſtator at his death, in and towards the payment of his debts and legacies, hath nothing in her hands deviſed to *W.* and *H.* wherewith to anſwer the growing payments of the annuity.

The monies owing to the teſtator at his death amounted to 461 *l.* and no more, and the houſhold goods, ſtock and cattle ſpecifically bequeathed to Mrs. *H.* for life, and then to her ſon, were of the value of 300 *l.* and no more, and the debts of the teſtator, and the other legacies amounted to the ſum of 315 *l.*

Query. Whether any other part of the eſtate of teſtator, ſave what *was deviſed to W.* and *H.* are ſubject or liable to the payments of the

the ſaid annuity to Mrs. *F.* the fund appropriated for that purpoſe being inſufficient.

Opinion. I am of opinion, that no other part of the eſtate is liable to the annuity.

Query. Whether Mrs. *H.* the executrix, is at liberty or not to pay the debts and legacies out of the money ariſing by the ſale of the rectory, *&c.* and the money owing to the teſtator at his death, given Mr. *W.* and *H.* upon the truſt aforeſaid, or out of the ſtock given to her for her life, and afterwards to her ſon, the ſaid money and ſtock being all his perſonal eſtate; or out of what fund is ſhe to pay the debts and legacies; and whether as the 50 *l.* given to the poor of *Great* and *Little Sheppey*, is to be raiſed out of the real and perſonal eſtate of the teſtator, the executrix may pay that ſum out of the money and ſtock, ſpecifically bequeathed as aforeſaid, or whether there being a default, muſt not ſhe raiſe the ſame out of the real eſtate?

Opinion. The legacy of 50 *l.* to the poor of *Great* and *Little Sheppey*, is charged upon the whole real and perſonal eſtate; the only fund left proper by the will to pay the debts, and the other legacies, and funeral expences, is the reſt and reſidue of the real and perſonal eſtate mentioned in the will, to be undiſpoſed of, and given to the daughter *L. H.* and the money, ſtock, and perſonal eſtate, which I think will all be liable to all the debts, funeral expences, and legacies; and if that fund be deficient, the legacies, except the ſaid 50 *l.* for which the ſaid whole eſtate is made chargeable, muſt loſe for want of a fund to pay them; all the gifts of other parts of the eſtate, are given in the nature of ſpecific gifts or legacies, and conſequently they are not to be broken into in favour of legacies, nor particularly charged thereupon; ſo that the money ariſing by the ſale of the rectory, will not be liable to debts, legacies, or funeral expences, it not appearing to be a chattel intereſt, if it be, it may be deviſed as part of the perſonal eſtate; indeed if it be a chattel intereſt, it will be liable as being part of the perſonal eſtate, which is indefinitely ſubjected to debts, legacies, and funerals. The caſe being generally ſtated, and the queſtion being generally put without diſtinguiſhing the nature of the eſtates, or of the debts, I have been as particular as I could, and I hope it will be underſtood. But this I muſt add, that creditors ſtand upon a different footing, for if the fund be deficient they will have a preference, and they will not be excluded of laying hold of any part of the eſtate which they can affect, as creditors by ſpecialty or otherwiſe. If the funds expreſsly appropriated to debts, legacies, *&c.* be deficient, the ſaid 50 *l.* charitable legacy muſt be raiſed out of the other eſtate.

July 27, 1745. *N. Fazakerley.*

CASE.

CASE.

T. B. late of *Reading*, draper and ſaleſman, being poſſeſſed of a large ſtock of ſhop goods, houſhold goods, plate, and other perſonal effects to the value of 800 *l.* and upwards; and alſo poſſeſſed of a houſe in *Reading* aforeſaid, held by leaſe from *A. B.* eſq; for lives, under the yearly rent of 23 *s.* 4 *d.* renewable on payment of 7 *l.* 10 *s.* at the death of each life, and being ſo poſſeſſed, the ſaid *T. B.* about 1720 went a voyage to the *Eaſt Indies*, but, before his departure, came to a verbal agreement with his brother *A. B.* that the ſaid *A. B.* ſhould take poſſeſſion of his ſaid houſe and effects in his abſence; and the ſaid *T. B.* accordingly left the ſame in his cuſtody, for the ſupport and maintenance of *E.* his wife, and *T.* his only child, then a minor; and alſo, in caſe he ſhould die in the voyage, then in truſt for his ſaid wife and child.

That ſaid *T. B.* died in the ſaid voyage, and the ſaid *A. B.* took all his effects, but took no care for the ſupport or maintenance of *T. B's.* ſaid wife or child.

About three years afterwards the ſaid *A.* took the ſaid *T. B.* the younger, to keep, and provided for him till the ſaid *A.*'s death, which happened about 16 or 17 years ſince; but took not the leaſt care for the maintenance of the ſaid *E.* widow of the ſaid *T. B.* the elder.

The ſaid *A. B.* before his death made his will, and appointed the ſaid *T. B.* the younger ſole executor thereof.

The ſaid *E.* never took any meaſures to oblige the ſaid *A.* to come to an account with her, and pay her her diſtributive ſhare of her late huſband's effects, fearing it ſhould be prejudicial to her ſaid ſon, if ſhe thereby incurred the diſpleaſure of the ſaid *A.* his uncle; and alſo avoided it during her ſon's minority, hoping that when he came of age, and to be in poſſeſſion of his eſtate, he would have had the duty and gratitude to make her amends, for all the hardſhips ſhe ſuffered from his uncle on his account, but he refuſes ſo to do.

The ſaid *E.* about 18 years ago, intermarried with one *F. P.*

The ſaid *T. B.* the younger, ſome time ſince attained his age of 21 years, and has taken poſſeſſion of all his late father's eſtate and effects; and has in his cuſtody all the accounts of what his uncle did in his ſaid truſt: whereby it appears that a very conſiderable ſum was in the hands of the ſaid *A.* in his life time, and now in the hands of the ſaid *T. B.* the younger, as the ſurplus of the perſonal eſtate of the ſaid *T. B.* the father, excluſive of the ſaid houſe.

The ſaid houſe at the death of the ſaid *T. B.* the elder, was let at 16 *l. per annum*, but on account of ſeveral reparations done thereto, by the ſaid *A.* juſt before his death, with monies he had in his hands of the ſaid *T. B.* the elder; the rent was advanced 26 *l. per annum*, and has ſo continued ever ſince.

We cannot ſay, whether the ſaid *A. B.* or the ſaid *T. B.* the younger, ever adminiſtered to the ſaid *T. B.* the elder.

Query

Query. Whether the ſaid *F. P.* and *E.* his wife, as the ſaid *E.* was the widow of the ſaid *T. B.* the elder, are not intitled to a third part of the ſurplus of the perſonal eſtate of the ſaid *T. B.* the elder, by virtue of the ſtatute for the diſtribution of inteſtates eſtates, and of the intereſt thereof from the death of the ſaid *T. B.* the elder, to this time? And whether they are not intitled to a third part of the ſaid houſe, and the old and improved rent thereof, from the ſaid *T. B.* the elder's death 'till now? And if ſo, what meaſures will it be moſt adviſeable for the ſaid *P.* and his wife to take for the recovery thereof, whether by bill in Chancery, or how otherwiſe?

Opinion. *E. P.* and her preſent huſband in right of her as widow of the inteſtate, is intitled to a third of the ſurplus of the inteſtate's perſonal eſtate. But the great length of time which has elapſed ſince the death of her huſband, without her making a claim, will be a great impediment to her recovering it, and the rather, as it will lay her under the difficulty of diſtinguiſhing the perſonal eſtate of her inteſtate huſband, from any other property that *A. B.* might die poſſeſſed of, or that may now be in the hands of *T. B.* her ſon. But ſhould ſhe be able to aſcertain what was the perſonal eſtate of her huſband, yet as it has all along reſted as a matter of account, and her right has never yet been liquidated, ſo as to create a certain debt, I conceive ſhe will hardly be intitled to intereſt, unleſs it be for ſo much as ſhe is able to prove to have been placed out on ſecurities, or in the funds, ſo as to have been all along producing intereſt. The moſt obvious meaſure for her to purſue for recovering her right, ſeems to be by a bill in equity.

With reſpect to the houſe, which is ſtated to have been a leaſe for lives, according to the caſe of *Oldham* and *Pickering*, 2 *Salk.* 464. (a hard determination, but yet never, that I know of, expreſsly contradicted) it will only be conſidered as aſſets for the benefit of creditors, and not be diſtributable for the benefit of the next of kin. But if it be not ſo granted to the inteſtate and his heirs, ſo as to make the ſon a ſpecial occupant, in caſe no adminiſtration has been granted to any body, it will be adviſeable for the widow to apply for it, as a means of intituling her to the benefit of the leaſe.

March 16, 1744. *T. Clarke.*

CASE.

CASE.

A. B. in *October* laſt, diſtrained the goods of *C. D.* for rent due to the ſaid *A. B.* at *Michaelmas* laſt, and took an inventory, and gave the uſual notice, and had them appraiſed in proper time by two ſworn appraiſers; but at the requeſt of the ſaid *C. D.* by order under his hand, gave him time to pay the money, which time is ſince expired, and the ſaid *C. D.* ſhould have taken and had them appraiſed himſelf, but has not done it; therefore may not the ſaid *A. B.* ſell the goods, and if any overplus, muſt he leave the ſame in the conſtable's hands, or will leaving them on the premiſes be ſufficient? The ſaid *C. D.* after the ſaid *A. B.* had diſtrained, made a bill of ſale of all his goods to his brother *E. D.* towards ſatisfaction of money, and is ſince in priſon, and the ſaid *E. D.* has continued, and ſtill is in the houſe; therefore is that bill of ſale good; and if ſo, is the ſaid *E. D.* obliged to pay the ſaid *A. B.* or has not the ſaid *A. B.* the liberty of diſpoſing of the goods for payment of his rent; and in caſe a commiſſion of bankruptcy ſhould be iſſued out againſt the ſaid *C. D.* will not that ſet the bill of ſale aſide?

Now there is another quarter's rent due to the ſaid *A. B.* at *Chriſtmas* laſt, can he make a ſecond diſtreſs, and how can he get the poſſeſſion of his houſe?

Therefore, upon the whole circumſtances, what method is moſt proper and adviſable for the ſaid *A. B.* to take to be ſafe and ſecure, and to get the poſſeſſion of his houſe?

Opinion. A. B. may ſafely ſell the goods by virtue of the diſtreſs, provided the appraiſers were duly ſworn by a conſtable of the pariſh before they appraiſed them, and a regular poſſeſſion has ever ſince been had of them by *A. B.* but *A B.* can only retain to himſelf on ſale the money he diſtrained for, and the coſts of diſtreſs, appraiſement, and ſale, and not the quarter's rent due at *Chriſtmas.*

The bill of ſale is of no avail as to *A. B.* nor is he bound to take any notice of it; but if after ſale of the goods, and the payment of the rent due at *Michaelmas*, and the appraiſement, diſtreſs, and ſale charges, any thing remains, the ſame muſt be paid into the hands of the conſtable.

A. B.'s only way to get poſſeſſion of the houſe is by ejectment.

E. Filmer.

CASE.

C. F. being poſſeſſed of, intereſted in, or entitled to, certain freehold and copyhold eſtates, at *Aſhford*, in the county of *Middleſex*, ſubject to the payment of an annuity of 15 *l.* a year to *M. F.* mother-in-

in-law of the ſaid *C. F.* during her life, he the ſaid *C. F.* did by indenture, for the conſideration therein mentioned, convey and aſſign over the ſaid eſtates to *W. C.* ſubject to the payment of the ſaid annuity, and the ſaid *W. C.* reſerved out of the ſaid purchaſe-money 300 *l.* in order to pay the ſame; in which ſaid indenture was a covenant for the ſaid *W. C.* to the ſaid *C. F.* to pay the ſaid 300 *l.* within three months after the death of *M. F.* at whoſe death the ſaid annuity ceaſed, to the ſaid *C. F.* his executors, adminiſtrators, or aſſigns.

The ſaid *C. F.* by indorſement on the back of the ſaid deed, reciting, that in conſideration that *M. F.* his wife, did join with him in levying a fine, and in the conveyance of the freehold lands and hereditaments, and alſo in ſurrendering the copyhold lands and eſtate abovementioned unto the abovenamed *W. C.* and for making ſome proviſion for his ſaid wife, and ſuch children as he ſhould have by her, in conſideration of 5 *s.* to him the ſaid *C. F.* in hand paid by *J. C.* of *Lincoln's Inn*, and for other conſiderations him thereunto moving, did bargain, ſell, aſſign, transfer, and ſet over, unto the ſaid *J. C.* all his eſtate, right, title, and intereſt, both in law and equity, of, in, and to the ſaid 300 *l.* and every part and parcel thereof, to hold to the ſaid *J. C.* his executors, adminiſtrators, and aſſigns, upon truſt, that immediately after the death of the ſaid *M. F.* mother-in-law to the ſaid *C. F.* the ſaid *J. C.* his executors, adminiſtrators, or aſſigns, might receive of and from the ſaid *W. C.* his heirs, executors, or adminiſtrators, the ſaid 300 *l.* or ſo much thereof as ſhould remain in his hands, and place the ſame out from time to time on government or other ſecurity, and from time to time to alter or change the ſecurity or ſecurities for the ſame, with the conſent of the ſaid *M. F.* his wife, and to pay the intereſt of the ſaid 300 *l.* to the ſaid *M. F.* his wife for life, ſhould be a ſufficient diſcharge, and the ſame not to be liable to the debts of her then preſent or any future huſband; and after her death upon truſt to pay the ſaid 300 *l.* unto and among the children of the ſaid *C. F.* and *M.* his wife, as ſhould be living at her death, ſhare and ſhare alike, but if at the death of the ſaid *M. F.* there ſhall be no ſuch child or children then living, then to pay the ſaid 300 *l.* unto the ſaid *C. F.* his executors or adminiſtrators.

Since which the ſaid *C. F.* died inteſtate, leaving the ſaid *M. F.* his widow, and two children, who are both daughters, and not yet of age, and alſo the ſaid *W. C.* is ſince dead, but firſt made his will, and thereby deviſed the above eſtate to his ſon *J. C.* after the death of his wife, who is ſince dead, and by her will made *R. L.* and *P. R.* her executors.

The ſaid *J. C.* ſold the above eſtate to *R. R.* ſubject to the payment of the ſaid annuity of 15 *l.* a year to the ſaid *M. F.* mother-in-law of the ſaid *C. F.* who is likewiſe dead, and the ſaid principal ſum of 300 *l.* not being as yet paid in, the ſaid *R. L.* has paid the intereſt thereof to the ſaid *M. F.* the widow of the ſaid *C. F.* deceaſed, to *September* laſt, but now is deſirous of paying the principal, upon having a ſafe and proper diſcharge. Therefore,

Query.

Query. Who can give the ſaid *R. L.* a legal diſcharge, the ſaid *J. C.* the truſtee is dead inteſtate, *R. C.* the father has taken out letters of adminiſtration to his ſon, whereby he inſiſts on having a power of receiving the ſaid 300 *l.* and to give a diſcharge for the ſame as adminiſtrator to his ſon, who was the truſtee in the indorſement; but the widow of the ſaid *C. F.* has not taken out adminiſtration to him; and in the above indorſement there is no letter of attorney to receive and give a diſcharge; can the ſaid *R. L.* be ſafe in paying the ſaid 300 *l.* to the ſaid *R. C.* adminiſtrator to the truſtee, without the widow of *C. F.* adminiſtring, and joining with him in giving the ſaid *R. L.* a diſcharge, and will that be a good and proper diſcharge, or in what manner will the ſaid *R. L.* be ſafe in paying it, ſo that he may not be called to an account hereafter, the children being entitled to the ſaid 300 *l.* after their mother's death, if living; and in caſe the money ſhould be miſapplied, whether the ſaid *R. L.* may not be called to an account?

Opinion. It does not ſeem to be adviſable for *R. L.* to pay in the 300 *l.* to the adminiſtrators of *J. C.* for as the infant children have a contingent intereſt in that money, as well as the mother, I am of opinion, that her taking out adminiſtation to the huſband, and joining with *R. C.* in giving a diſcharge to *R. L.* on his paying the money, will not ſufficiently indemnify him, as he has notice of the truſts to which that money is ſubject; and as infants are concerned in the caſe, the ſafeſt method for *R. L.* to take, ſeems to be, not to pay the money without the privity and direction of the court of Chancery.

Middle Temple, 10th *January*, 1740. *Tho. Clarke.*

CASE.

G. P. a poor pariſhioner of the pariſh of *Low Layton*, on the ſecond of *February* 1734, having the misfortune to break his leg in two places, Mr. *R. C.* a ſurgeon was ſent for by him and his wife to ſet it, which he accordingly did, and attended him daily, to the 15th of *June* 1735. About a fortnight after the accident a veſtry was called, and the patient was ordered 8 *s. per* week, which was paid by ——— *P.* then churchwarden, or his beadle, to *Eaſter*, and from *Eaſter* Mr. *H.* ſucceſſor to Mr. *P.* paid the patient to his death the ſaid 8 *s. per* week for his ſubſiſtance. Mr. *H.* alſo ſent Mr. *D.* another ſurgeon, twice during the patient's confinement, to ſee whether Mr. *C.* took proper care of him.

It being at laſt agreed between the two ſurgeons that it was adviſeable to cut off his leg, *D.* acquainted Mr. *H.* with it, and afterwards gave Mr. *C.* advice that he had told him, and that they might delay it till *Monday*.

And thereupon Mr. *H.* the churchwarden, removed the patient to an hoſpital, without his or his wife's conſent, where he died the night he arrived.

After the patient's death, Mr. *C.* was ſent for to a veſtry, and was aſked by ſome of the gentlemen, what he demanded for his trouble? to which he anſwered, 2 *s.* 6 *d. per* time for every attendance, which would have amounted to about 13 *l.* and *W.* their beadle, declared they had reſolved to give Mr. *C.* five or ſix guineas for his trouble, but now they refuſe to give him any thing.

Query. Therefore as the churchwardens did not ſend for Mr. *C.* at firſt, nor afterwards direct him to proceed in the cure, ſave tacitly as above, will the ſending for Mr. *C.* after the patient's death to the veſtry, in order to make him a preſent, make them liable to pay him a reaſonable ſum for his trouble?

Or are the churchwardens as ſuch, and in all events liable to pay it, though the patient did not wear a badge as a poor pariſhioner, or receive alms of the pariſh, before his misfortune, ſave once on a like occaſion?

Opinion. Mr. *C.* has very ſlight evidence in this caſe, and ſhould have had the overſeers of the poor, or ſome of them, to have engaged to be his paymaſter. However, as the patient was not of ability to make ſatisfaction, and received relief from the pariſh, a little proof will be ſufficient to ſatisfy a jury, that what Mr. *C.* did was upon the credit of the pariſh."

Query. If an action will lie, will a common *clauſum fregit* do, and muſt *P.* who was one of the churchwardens at the time *C.* was firſt ſent for, and was out at *Eaſter*, be ſued as well as the now churchwardens, and muſt it be a joint action?

Opinion. As Mr. *H.* was the only perſon who appeared to have concerned himſelf, I think it moſt adviſable, that the action ſhould be brought againſt him alone, upon a common *clauſum fregit.*

Wm. Chappell.

CASE.

AN indictment was brought againſt the defendant for conſpiring and combining to marry a poor perſon of the pariſh of *Dunnington*, to a poor perſon of the pariſh of *Heſcote*, which ſaid indictment, upon traverſe, was found falſe, and the proſecutor did not appear, but threatens to bring a new indictment.

Query.

Query. If a good action does not lie for damages, especially if the indictment be found malicious?

Opinion. I conceive a good action lies for damages; but as the profecutor threatens another indictment, I think it proper to waive fuch action till after the next aſſizes.

June 11th, 1726. *T. Gordon.*

CASE.

2d *January*, 1737. *A. B.* by his will of this date, gave and deviſed his manor or lordſhip of *B.* in the county of *S.* and all and every his meſſuages, tenements, farms, lands, and hereditaments, in *B.* aforeſaid, to *C. B.* deceaſed, his youngeſt ſon, for his life, without impeachment of waſte, and to his firſt and other ſons in tail-male, with remainder to his eldeſt ſon *J. B.* for his life, without impeachment of waſte, and to his firſt and other ſons in tail-male, with remainder to all and every his four daughters, their heirs and aſſigns for ever, as tenants in common, and the ſaid teſtator thereby impowered the ſaid *C. B.* and *J. B.* ſeverally and reſpectively, when, and as they ſhould be in the actual poſſeſſion of the ſaid manor and premiſes, by virtue of the limitations in his ſaid will, but not before, or otherwiſe, to demiſe all ſuch parts and parcels of the ſaid manor and premiſes, as then were, or lately had been demiſed, for the life or lives of one, two, or three perſons, or for any term or number of years determinable on the death of one, two, or three perſons, ſo as every ſuch demiſe be made by indenture in writing legally atteſted, or by copy of court-roll, according to the cuſtom of the ſaid manor, and there be reſerved reſpectively thereupon, the uſual rents, herriots, and ſervices, or more, but not leſs. *C. B.* is dead without iſſue-male, and *J. B.* is in poſſeſſion of the manor.

The teſtator always granted reverſionary leaſes and copies, as did his predeceſſors, and ſo did *C. B.* after poſſeſſion, and *J. B.* has likewiſe granted reverſionary leaſes, and copies after poſſeſſion.

As the number of lives upon the leaſes, and copies in poſſeſſion and reverſion, never exceeded three, and there is no confinement in the power to the exerciſe of it to leaſes or copies in poſſeſſion.

Query. Whether *J. B.* has not a right under this power to grant reverſionary leaſes and copies, or either, particularly after leaſes or copies of the teſtator's, ſo as the number of lives upon thoſe in poſſeſſion and reverſion, do not exceed three in the whole, and leaſes be not granted of copyholds, nor copies of leaſeholds?

Opinion. I am of opinion, that *J. B.* may, by virtue of the power, upon the dropping of any one life, in a leaſe or copy, add a new life to fill up the numbers in favour of the tenant in poſſeſſion; or

if he declines to fill up his leaſe or copy, and to pay the proper fine, then *J. B.* may make a reverſionary grant to another for the term of one life, or of two lives (if ſo many ſhall chance to have dropped out of the ſubſiſting grant) provided the whole number on the preſent and reverſionary grants does not exceed three.

December 31, 1766. *C. Yorke.*

CASE.

A. a merchant, exports ſundry goods, whereon he is entitled to a drawback of the duties paid on the importation of the ſaid goods.

B. a clerk in the cuſtom-houſe, is employed by *A.* to procure and paſs through the ſeveral offices the inſtrument (called a debenture) by which the amount of the drawback is to be obtained.

The acts, on the part of the merchant, reſpecting this inſtrument, are, his oath as to the real exportation of the goods, and his indorſement by way of acquittance, or receipt.

B. advanced money to *A.* having at the time ſeveral of theſe debentures in his hands unperfected, though not expreſsly on the ſecurity of the debentures, and for the ſum due took *A.*'s caſh draught upon his banker, dated 14th *January*, 1767, inſtead of the 4th *February*, 1767, the day on which the tranſaction happened.

B. in the courſe of buſineſs, paid this draught away on the day he received it, without indorſement to *C.* who unluckily omitted to tender it to the banker for four or five days, and until *A.* had drawn all his caſh from thence, ſo that, on refuſal of payment, he brought it back to *B.* and in the intermediate time *A.* became a bankrupt.

Query. Can *B.* compel the aſſignees under the commiſſion to indorſe the ſaid debentures when otherwiſe perfected, ſo that *B.* may receive the money in diſcharge of the debt due to him, the bankrupt being willing to make oath to the exportation, or can the aſſignees compel *B.* to deliver up the debentures to them, and muſt *B.* come in under the commiſſion for his demand?

Opinion. If it is uſual, as I am informed it is, for the clerks of the cuſtom-houſe to advance money to merchants upon the ſecurity of debentures, whilſt they are paſſing through the offices, and before they are perfected, I think the debenture will be a ſecurity to *B.* for the money advanced; the omiſſion of four or five days in not carrying the draught to the banker, is of no importance, as it makes no alteration in the bankrupt's eſtate; if there is any ſurplus from the debenture after *B.* is paid, I preſume the aſſignees, if neceſſary, will aſſiſt in receiving the money; if the drawback cannot be received without the aſſignees, and they refuſe their aſſiſtance, *B.* muſt apply by petition to the Chancellor in the *matter of A.* the bankrupt, with an affidavit of the money lent

lent upon the debenture, according to the cuſtom and uſage of the clerks who paſs them through the offices; and I imagine that the Lord Chancellor will direct the aſſignees to join in doing what is neceſſary for receiving the drawback, by indorſing it, or otherwiſe. If *B.* can receive the money without the aſſignees, it would be better to do ſo, paying them the ſurplus; and I do not think that the aſſignees can compel *B.* to deliver up the debenture, and leave him to come in under the commiſſion for his demand.

February 13, 1767. *C. Sayer.*

CASE.

3d *February*, 1748. BY ſettlement on the marriage of *A. B.* with *C. D.* his wife, the eſtates of *A. B.* were conveyed to truſtees in fee, and their heirs (*inter alia*) after the deceaſe of *A. B.*

"To the uſe and intent that the ſaid *C. D.* might, during her "life, receive an annuity or yearly rent-charge of 600*l.* pay- "able quarterly by equal portions, at *Lady-day*, *Midſummer*, "*Michaelmas*, and *Chriſtmas*; the firſt payment to begin and be "made on ſuch of the ſaid quarter days as ſhould firſt happen "after the deceaſe of the ſaid *A. B.* in bar of dower, with power "of diſtreſs on non-payment for forty days."

And then a term was raiſed for ſecuring ſuch annuity.

A. B. died 17th *November*, 1752, and one quarter's annuity was paid to, or retained by *C. D.* as due at *Chriſtmas* 1752, O. S. and the annuity was cleared to *Chriſtmas* 1766, O. S.

C. D. died 20th *June*, 1766, having made a will, and appointed executors.

Query. To what time are the executors of *C. D.* entitled at law, or in equity, to the quarterly payment of the ſaid annuity, and is this caſe within the ſtatute of 11th *Geo.* 2. *cap.* 19. *ſect.* 15?

Opinion. The executors are entitled to the payment which became due at *Lady-day* 1766, but not to any apportionment of the ſucceeding quarter. This caſe does not come within the 11th *Geo.* 2.

April 2, 1767. *Wm. De Grey.*

CASE.

THE father of the parties died inteſtate about ſix years ago, leaving a widow, three ſons, and a daughter, and was at the time of his death indebted to one Mr. *L.* a conſiderable ſum for rent, to the amount of near all the inteſtate's effects.

The

The widow adminiſtred to her late huſband's effects, and accordingly poſſeſſed the ſame, and continued in poſſeſſion of Mr. *L.*'s eſtate without ſettling and paying the debts due from the inteſtate to Mr. *L.* (he being a friend to the widow, and not calling it in) and uſing the goods of the inteſtate, ſuch as live ſtock and utenſils in huſbandry, to the time of her death, without taking any inventory thereof, or making any or very little change in the live ſtock.

About half a year ago the widow died, having firſt made her will, and thereof appointed the defendant, one of her ſons, executor, who, by virtue thereof, poſſeſſed himſelf of the aforeſaid ſtock and utenſils, and is in poſſeſſion of the farm, (with the conſent of Mr. *L.*) but one of the other ſons has obtained letters of adminiſtration to his father, un-adminiſtred by his mother, and thereupon commenced this action in trover.

Query. Can it, after this length of time, be conſidered, that the live ſtock now remains un-adminiſtered; for, are not repreſentatives chargeable, within a reaſonable time after the death of inteſtates, with the value of the effects come to their hands, whether ſold or kept for their own uſe, and the property by ſuch means changed; but if you think this action can be ſupported, may Mr. *L.* now ſeize by a diſtreſs the cattle in queſtion, for the arrears of rent due to him at the inteſtate's death, ſuch cattle being on his farm, and to whom muſt notice be given?

Opinion. I am of opinion, unleſs a repreſentative pays, in a courſe of adminiſtration, the value of the effects, that ſuch effects remain as the goods of the inteſtate or teſtator, and the ſame remaining in ſpecie at the death of ſuch repreſentative, the ſucceeding repreſentative will have a right to them at law; and therefore I conceive that the preſent action is maintainable. Mr. *L.* may undoubtedly ſeize any goods upon the farm for the rent due under a ſubſiſting leaſe, but not upon an expired one, unleſs under the ſtatute of Queen *Ann*, within ſix months, and during the tenant's poſſeſſion, and landlord's title; but I do not ſee that a diſtreſs now to be taken can in any reſpect avail the defendant; if the defendant chuſes nevertheleſs to try the cauſe, he muſt plead the general iſſue.

Middle Temple, 25 *February*, 1767. *Ja. Wallace.*

CASE.

CASE.

1ſt *May*, 1736. *C. R.* by his will *directs*, firſt, that all his debts and funeral expences be diſcharged, then he gives to his brothers *A. R.* and *C. R.* 40*l.* a piece, to be paid them in one month after his deceaſe; he gives unto his ſiſter *E. M.* 400*l.* to be paid her after the deceaſe of his wife *E. R.* and in caſe his ſiſter dies before his wife, then the ſaid 400*l.* was to be equally divided among his ſaid ſiſter's children, then living; he gives unto his couſin *J. C.* a minor, 10*l.* to put him out apprentice, and 90*l.* more at the death of his wife; and in caſe ſhe dies before he is out of his apprenticeſhip, the money to be put out for his uſe; he gives to his ſiſter *M. R.* 10*l.* to be paid immediately after his death, and 90*l.* more at the death of his wife; unto his ſervant *T. M* he gives his liberty, and 20*l.* in money, with all his wearing apparel, to be paid in one year after his deceaſe; he gives, deviſes, and bequeaths to his wife *E. R.* all the remainder of his eſtate real or perſonal, money, plate, jewels, bills, bonds, houſehold goods, or any other effects belonging to him, to diſpoſe of the ſame as ſhe ſhould think proper; and appointed her and his brother-in-law Dr. *S. W.* and *T. P.* executors.

1ſt *November*, 1737, The ſaid *C. R.* by a codicil *reciting*, that ſince making his will, he had placed out *J. C.* apprentice, he therefore revokes the legacy of 10*l.* and alſo 10*l.* part of the 90*l.* given him by the ſaid will, and alſo *reciting*, that ſince the ſaid will he had purchaſed a real eſtate, part freehold, and part copyhold, he thereby deviſes the ſame to his wife and her heirs, and in all things elſe he confirms his will: the codicil was executed, in the preſence of three witneſſes, and the copyhold ſurrendred to the uſe of his will.

The teſtator before his death contracted with workmen to repair his real eſtate.

The teſtator's perſonal eſtate, ſave the ſum of 400*l.* and ſave what he laid out in the purchaſe mentioned in the codicil, conſiſts in ſhares of ſhips, and debts due from perſons beyond the ſeas, and the above ſum of 400*l.* will little more than pay the ſaid workmens bills, and his other debts, and the legacies directed to be paid in his widow's life-time, and his funeral expences; now as to the legacies that are to be paid after her death, the legatees inſiſt, that the widow and executrix ought either to lodge a ſufficient ſum to anſwer their legacies in ſome public fund, or give ſecurity that the ſame ſhall be paid according to the will. Therefore,

Query. Will a court of equity oblige the widow ſo to do, eſpecially as his debts abroad are very precarious, and may never be got in; and in caſe of a deficiency, will the real eſtate be liable to make up ſuch deficiency?

Opinion. I conceive, that a court of equity will not in this caſe compel the executrix to give ſecurity for the payment of the ſaid

legacies, or to lodge a ſufficient ſum in the public funds, for that purpoſe, unleſs it can be proved, that ſhe has miſbehaved herſelf, or is in danger of becoming inſolvent.

25th *April*, 1738. *T. Barnardiſton.*

CASE.

J. J. Eſq; deceaſed, made a will, or teſtamentary writing, in the following words, *viz.*

I *J. J.* of *Dallington*, do hereby declare, that I have myſelf deſtroyed all wills by me formerly made, and that this is my laſt and only will, by which I leave my dear and loving wife, all my perſonal eſtate whatſoever, which I ſhall die poſſeſſed of, and all my arrears of rent, and appoint her ſole guardian of the child of which ſhe is now pregnant. Given under my hand, this 20th day of *November*, 1749.

J. J.

Note, The whole of the foregoing teſtamentary bequeſt is wrote with his own hand.

The ſaid Mr. *J.* intending to go abroad for the recovery of his health, and being minded to ſettle his affairs, did, upon the 10th of *November* inſt. partly by word of mouth, and partly in writing, give directions to his attorney to draw his will.

By the ſettlement made on his marriage with Lady *A. J.* his eſtate at *Dallington* is ſettled (among other uſes) to the uſe of the firſt ſon of the body of the ſaid Lady *A.* in tail-mail, remainder to the ſecond, third, fourth, and all other ſons in *tail mail*, remainder to himſelf, his heirs and aſſigns for ever, with power to raiſe money for younger childrens portions, whether ſons or daughters.

The ſaid Mr. *J.* having no ſon living, and only one daughter, and being minded to ſettle his eſtate at *Dallington* on ſuch daughter, on failure of iſſue-mail, and to make other diſpoſitions of his eſtate, wrote inſtructions in the following words and figures, *viz.*

In truſt to *F.* Lord *G.* and *G. D.* Earl of *H.* for the benefit of my daughter *A.* and if any other daughter be living at my death, to pay her 10,000 *l.* when ſhe ſhall arrive at eighteen, or marriage with the conſent of her mother and guardian; but the 4000 *l.* ſettled on younger children to be part of the 10,000 *l.* and to go all to ſuch ſecond daughter, and the land to be ſettled on that condition; 500 *l.* a piece to the brother and ſiſter, the furniture of *Dallington* houſe and out-houſes, to go as *heir-looms* to whoever has the right to the manſion-houſe; the reſt of my perſonal eſtate to go to my wife; but if I leave a ſon, then the reſt of my perſonal eſtate to go to my daughter or daughters, over and above what is ſettled after payment of debts and funerals; and if any child of my body ſhould not attain twenty-one, then their ſhare of my perſonal eſtate to go to their other ſiſters, except the eldeſt,

if

if more than one, otherwiſe to my wife; the land to go to my eldeſt daughter, and heirs-male of her body, taking the name of *J.* and ſo on failure to the heirs-male of the ſecond and third; and in failure of heirs-male of all the daughters, then to my brother ——, and his heirs-male; and in failure thereof to my brother ———, and his heirs-male; and in failure to my brother ————, and his heirs for ever; the uſe of the houſe, and gardens, and appurtenances, to my wife as long as ſhe remains ſole; and the uſe of the fiſh ponds, and guardianſhip of my ſon or daughter to be in my wife; but ſubject to the directions of the truſtees, who ſhall make ſuch allowance for maintenance as they ſhall think proper; and appointed his wife and his brother *B.* executors; but, they being executors, are not to cancel any debt due to me.

Note The foregoing inſtructions are not dated or ſigned; but it is certain they are all of the hand-writing of the ſaid *J. J.* and were wrote upon the 10th of *November* inſt. in the preſence of his attorney, as part of the inſtructions for his will, which was afterwards drawn; but Mr. *J.* did not live to execute it; and never ſaw the will as drawn by the attorney.

Query, Which of the foregoing writings will (with regard to the perſonal eſtate) be pronounced as the laſt will and teſtament of the ſaid deceaſed; if the firſt ſhould be pronounced to be ſo, will it not be proper and adviſable for Lady *A. J.* (as no executors are named therein) to take out adminiſtration with that will, or teſtamentary ſchedule annexed; and if the laſt ſhall be pronounced as his laſt will, will it not be proper for her Ladyſhip, and the deceaſed's brother *B.* (if he thinks fit) to obtain a probate of the ſame?

Opinion. The inſtructions given to the attorney on the 10th of *November*, being all of the hand-writing of the deceaſed, will, in my opinion, be pronounced as the laſt will, and as ſuch operate with regard to the perſonal eſtate, provided that the deceaſed did not between the 10th *November* and the time of his death, expreſs any diſlike of ſuch diſpoſition, or declare he intended any alteration; but from the general tenure of his behaviour appeared to be ſatisfied with what he had ordered, and would have executed it, had he not been prevented by death.

I am of opinion Lady *A. J.* and the brother *B.* are entitled to a probate; but it will be neceſſary to have an affidavit of two perſons, that ſuch paper is Mr. *J.*'s hand-writing. I think it will alſo be adviſeable for the attorney to make an affidavit as to all circumſtances that aroſe on the 10th *November* relating to this paper, and whether he ſaw the deceaſed after that time, or received any further directions from him.

If the laſt writing ſhould be pronounced for,

Query. How far will the direction given, that the furniture of *Dallington* houſe and out-houſes, ſhall go as *heir-looms* to whoever has the right to the manſion-houſe, as it tends in ſome meaſure to realize a part of his perſonal eſtate; and likewiſe the other direction, that his Lady ſhould have the uſe of his houſe and gardens, and fiſh ponds, ſo long as ſhe remains ſole, extend?

Opinion. The furniture of the houſe and out-houſes of *Dallington*, being part of the perſonal eſtate, the directions given, that they ſhall go as *heir-looms* to whoever has a right to the houſe, I am of opinion, are valid by this paper of the 10th *November*.

But the direction given, that his wife ſhould have the uſe of the houſe, *&c.* as long as ſhe remains ſole, is a conditional deviſe of part of the real eſtate from the heir at law, and cannot, I apprehend, paſs by this unexecuted paper.

Query. On the whole, your advice is deſired, in what manner Lady *A. J.* ſhall act under the preſent circumſtances?

Opinion. The affidavits mentioned in the anſwer to the firſt query, are, I think, ſufficient to obtain a probate of the inſtructions of the 10th *November* in common form.

But as the executors muſt at that time ſwear they believe that to be the laſt will, if they have any doubts as to that part, I would then adviſe them to inſtitute, in an amicable manner, a cauſe in the *prerogative court*, to bring both papers before the judge, and take his opinion which ſhall be deemed the laſt will.

Doctors Commons, Nov. 21, 1752. *Charles Pinfold.*

CASE.

J. J. Eſq; deceaſed, partly in writing, but in great hurry, gave directions to his attorney to draw his will; but, being taken ill the ſame evening, never aſked to ſee the will, or ſhewed any deſire to ſee it, and was perfectly in his ſenſes during his illneſs, till within two hours of his death.

Agreeable to the inſtructions, a will was afterwards drawn, which Mr. *J.* did not live to execute, or ever ſaw the draft as drawn by his attorney.

Query. Which of the two writings, as ſtated in the foregoing caſe, will be deemed his will?

Opinion. I am of opinion, that the firſt will, as to the perſonal eſtate, is not revoked by the inſtructions of the 10th of *November laſt*, which I conſider as incomplete, and in the nature of a preparation

preparation towards making a new will. It will be proper for Lady *A.* to take out adminiſtration, with the will annexed; but ſhe muſt diſcloſe and produce both writings.

If the laſt writing ſhall be pronounced for,

Query. How far will the direction *&c.* as to her remaining ſole, extend?

Opinion. In the caſe put, the bequeſt of the furniture might be good to the daughter, who would be entitled as heir to the manſion-houſe; but the deviſe of the houſe, garden, and fiſh ponds, would be void, the will not being properly atteſted.

Query. As there is no iſſue-male of the marriage, and the daughter is heir of her father, and an infant of very tender years, what will be adviſable to be done on her behalf, with regard to the real eſtate?

Opinion. It is moſt adviſable to put the eſtate and infant under the care of the court of *Chancery*, and to have a receiver appointed.

Query. Will not Lady *A. J.* have a right to the guardianſhip of her daughter during her infancy, and the care of her education and maintenance; and can ſhe by will, in caſe of her death before her daughter ſhall attain her age of twenty-one years, appoint any perſon ſhe ſhall think proper to be her guardian during her infancy?

Opinion. She has no abſolute right to the guardianſhip, the will by which it is given not being properly atteſted; but the court of *Chancery* will certainly appoint her guardian; ſhe cannot leave it by her will, though her recommendation might have weight with the court.

Mr. *J.* deceaſed was one of the reſiduary deviſees of Sir *J. J.* whoſe real eſtates have been lately ſold before a maſter, purſuant to a decree of the court of *Chancery*. The ſeveral purchaſers have been abſolutely confirmed, and ſome of them have paid their purchaſe-money into the Bank, and are to have the rents and profits from *Lady-day* laſt, but none of the conveyances have been executed.

Query. Will Mr. *J. J.*'s ſhare of the money paid into the Bank, as well as what remains in the purchaſers hands, who are abſolutely confirmed purchaſers, be deemed a part of his perſonal eſtate?

Opinion. I am of opinion, that Mr. *J.*'s ſhare of the purchaſe-money, will be deemed part of his perſonal eſtate.

Query.

Query. On the whole, your advice is desired, in what manner Lady *A. J.* shall act under her present circumstances?

Opinion. Lady *A.* under both writings, is absolutely entitled to the bulk of the personal estate. She should produce both; and I think the court will grant administration with the first annexed. The real estate is affected by neither writing, and descends to the infant daughter. I think a bill should be filed in *Chancery* on her behalf, for the usual directions to take care of her person and estate during her minority.

December 4, 1752. *W. Murray.*

CASE.

C. G. Esq; by his last will and testament, duly executed and attested, devises his estate in *hæc verba.*

I give and devise all and sigular my manors, advowsons, messuages, lands, tenements, and hereditaments whatsoever, in *W.* in the county of *E.* or elsewhere, with their and every of their rights, members, and appurtenances, and all other my real estates, whatsoever and wheresoever, unto my daughter *M.* wife of *J. S.* Esq; and to her heirs and assigns for ever, in the first place to pay and apply the rents, issues, and profits of my said real estate, towards payment, and in discharge of such of my debts and legacies in this my will or any codicil thereto, I shall hereafter make and execute as my personal estate, (which I direct shall be thereto first applied) shall not extend to, or be sufficient to pay and discharge; and from and after satisfying all my said debts, legacies, and funerals, then to and for the sole use, benefit, and behoof of my said daughter, her heirs and assigns for ever; subject nevertheless to, and chargeable with such contingent payments and conditions as are herein after also mentioned; and I will and declare, that my said estate and effects shall not be subject to, or liable to the debts, controul, or engagements of the present or any other husband my said daughter shall happen to marry, and that her separate receipt or release from time to time, whether sole or married, shall be a sufficient discharge to the tenants and occupiers of my said real estates, as well as to all other persons I have any demand on or account with whatsoever: provided if my said daughter shall have an eldest son who shall attain the age of twelve years, or any other son who shall become an eldest son, and shall attain that age, then my will and mind is, that such son shall by and out of the rents and profits of my said real estates have, receive, and be entitled to an annuity, and clear yearly sum of 60 *l.* of lawful money *&c.* payable quarterly, free from all deductions whatsoever, to be retained, paid, and received, by his father, mother, or other person, who shall have the care and charge of him, and to be expended and applied towards his maintenance and education, until such son shall *attain his age of* sixteen years, when the said annuity shall cease and

determine; and from and after the time ſuch ſon ſhall attain his ſaid age of ſixteen years, ſuch ſon ſhall then and from thenceforth have, receive, and be entitled to receive one annuity, or clear yearly ſum of 80 *l.* of like money, payable quarterly, clear of all deductions, to be retained, paid, received, expended, and applied for the purpoſes aforeſaid, until ſuch ſon ſhall attain his age of nineteen years, when the ſaid annuity ſhall ceaſe and determine; and from and after the time ſuch ſon ſhall attain his age of nineteen years, then my will and mind is, that ſuch ſon ſhall have, receive, and be entitled to have and receive, out of the rents and profits of my ſaid real eſtates, for the purpoſes aforeſaid, one annuity of 140*l.* clear of all deductions, until he attains to the age of 21 years; and from theneeforth the ſaid annuity of 140 *l.* ſhall ceaſe; and then my will and mind is, that ſuch ſon ſo attaining his age of twenty-one years, ſhall take, receive, and be paid the full ſum of 200 *l.* of lawful money, clear of all deductions, payable to ſuch ſon quarterly, during the natural lives of his father and mother, and the life of the ſurvivor of them; and in caſe of any default in payment of any of the ſaid annuities, or any of the ſaid quarterly payments, as they ſhall reſpectively become due and payable, or within forty days next after, I do hereby deviſe, direct, and give full power and authority unto my brother-in-law *J. C.* and his heirs, to enter upon any part of my ſaid real eſtates ſo charged with the payment thereof, and to ſeiſe and diſtrain for the ſame; and all coſts and charges that ſhall be occaſioned or incurred by non-payment thereof, and their own reaſonable expences diſburſt therein, and to ſee the ſame applied purſuant to the directions of this my will; and in caſe my ſaid daughter ſhall depart this life in the life-time of the ſaid *J. S.* her ſaid preſent huſband, then and ſubject to the payments of ſuch of my ſaid debts, legacies, annuities, and funerals, that ſhall happen to remain unpaid, if ſuch there are, as my inclination has been known to my ſaid daughter, I hope ſhe will have no objection to give my ſaid real eſtates, and every part therof, with the appurtenances unto the ſaid *J. S.* her ſaid huſband, for and during the term of his natural life, unleſs ſome extraordinary occaſion ſhall ariſe and give reaſon to the contrary; and likewiſe ſubject to the further and future charges and incumbrances herein after, or by any codicil as aforeſaid, to be by me duly made, ſhall be mentioned; and from and after the ſeveral deceaſes of my ſaid daughter, and her ſaid preſent huſband, and of the ſurvivor of them, in caſe by the terms and limitations of the ſettlement made on their marriage, and to which I am a party, it ſhall be neceſſary to raiſe the ſum of 8000*l.* as a proviſion for the children and iſſue of the ſaid marriage, as in the ſaid ſettlement is mentioned, then I do hereby charge my own real eſtates herein and hereby before given and deviſed, in manner aforeſaid, with the payment of the ſum of 2000 *l.* of lawful money of *Great Britain*, in part of the ſaid ſum of 8000 *l.* for the purpoſe in the ſaid ſettlement mentioned, and in *exoneration* of the ſaid ſettled eſtate, in favour of the eldeſt ſon of the ſaid marriage, who by virtue of the ſaid ſettlement ſhall become entitled to ſuch ſettled eſtate,

eſtate, and *ſubject nevertheleſs* to the aforeſaid charges, upon the contingency in this my will before, or any codicil hereto, or herein after mentioned; and I do hereby give full power and authority to my ſaid daughter, notwithſtanding her preſent or any after *coverture*, to grant leaſes of my ſaid real eſtates, or any part thereof, for any term not exceeding twenty-one years in poſſeſſion, and not in reverſion, or for future intereſt, for the beſt improved rents, without taking any fine under the uſual covenants, reſervations, and agreements, as are uſually made, or can be obtained, between landlords and tenants, ſuch tenants executing counter-parts of ſuch their leaſes; and I give unto my ſaid daughter *M.* all my perſonal eſtate, and every part thereof whatſoever, after payment of my ſaid debts, legacies, and funerals, in manner as herein before mentioned.

The teſtator ſoon after died without making any codicil.

M. S. hath never had any child, nor at preſent is there any likelihood of any, having been married ten years.

Query. Can the ſaid *M. S.* alone, notwithſtanding her *coverture*, ſell and diſpoſe of the ſaid deviſed eſtates, or deviſe the ſame by her will to ſuch uſes as ſhe ſhall think proper? And if ſhe cannot, What ſtep muſt ſhe and her huſband take to enable her ſo to do?

Opinion. I conceive that *M. S.* being under *coverture*, cannot diſpoſe of the deviſed eſtates, without levying a fine.

As a purchaſer of a part of the ſaid deviſed premiſes, now offers very advantageous terms,

Query. What method muſt be purſued to ſecure the purchaſer from the annuities to an elder ſon, and, in caſe of more children, from the 2000 *l.*?

Opinion. I think the whole reſidue of the eſtate not agreed to be ſold, may be made a collateral ſecurity againſt the annuities *&c.* in caſe the ſame be ſufficient for that purpoſe.

November 27th, 1766. *Wm. Rivet.*

CASE.

CASE.

Sept. 30, 1745. BY indenture of this date of three parts, between *J. C.* Gent. and *G.* his wife, of the firſt part, *G. G.* Gent. of the ſecond part, and *A. D.* Gent. of the third part, *it was covenanted* and agreed by and between the parties thereto, that the ſaid *J. C.* and *G.* his wife, ſhould and would, on or before the then next *Michaelmas* term, levy a fine upon acknowledgment of right, and ſo forth, with proclamations unto the ſaid *G. G.* and his heirs, of a meſſuage and lands therein ſpecified, which fine was thereby declared *to be and enure* to the uſe of the ſaid *G. G.* and his heirs, to the intent that he might become a good tenant of the freehold, for perfecting a *common recovery*, therein covenanted and agreed to be ſuffered, which recovery, when ſuffered, was thereby declared *to be and enure*, as to all the premiſes, (except *Little Field* four acres, *Great Field* twenty acres, and a cloſe of arable land adjoining to *Great Field* three acres.)

To the uſe of the ſaid *J. C.* for his life, *ſans* waſte.

To the uſe of *G.* his wife for her life.

To the uſe of ſuch child or children of the ſaid *J. C.* on the body of the ſaid *G.* his wife, and for ſuch eſtates as the ſaid *J. C.* ſhould by deed or will appoint; and for default of ſuch appointment, or from or after the determination of any eſtate or eſtates, term or terms, ſo to be limited or appointed.

To the uſe of all and every the child or children of the ſaid *J. C.* on the body of the ſaid *G.* his wife, begotten, or to be begotten, if more than one ſuch child, equally between them, ſhare and ſhare alike, as *tenants in common*, and not as *joint tenants*, and their reſpective heirs and aſſigns for ever.—Or if there ſhould be only one ſuch child,

To the uſe of ſuch only child, and his or her heirs and aſſigns for ever.—If no ſuch child,

To the uſe of the ſaid *J. C.* his heirs and aſſigns for ever.

As to the ſeveral little fields *&c.* above excepted,

To the uſe of ſuch perſon or perſons, and for ſuch eſtate or eſtates, term or terms, as he the ſaid *J. C.* ſhould, by deed or deeds in writing, or by his laſt will and teſtament in writing, duly executed and atteſted as aforeſaid, direct, limit, or appoint; and for want of any ſuch direction or appointment,

To the uſe of the ſaid *J. C.* his heirs and aſſigns for ever.

Proviſo impowering a revocation by *C.* and wife.

This deed was executed by all the parties.

The ſaid *J. C.* and his ſaid wife are both dead, leaving iſſue only one child; but the ſaid *J. C.* ſurvived her, and afterwards intermarried with Mrs. *M. S.* ſiſter of the ſaid *G.* his former wife, by whom he had no iſſue.—The ſaid *J. C.* having charged the eſtate, reſerved in his own power by the above deed with a conſiderable ſum by way of mortgage, and wanting a further ſum, which was rather more than was eaſily to be procured on thoſe lands, prevailed on his then wife, the ſaid *M.* to ſuffer a *recovery* of a cloſe of ground called

Spring Close, she was seised in fee of, and join it in the mortgage, and to give up the equity of redemption to him the said *J. C.* and in consideration of his compliance with her request, by indentures of lease and release, dated the ——— day of ———, and made between the said *J. C.* and *M.* his wife, of the one part, and *H. M.* of the other part, in consideration that the said *M.* had mortgaged the said close of ground called *Spring Close*, for the debt of her said husband, and vested the equity of redemption in him, and for the affection he had for his said wife, and of *five shillings* to him paid by the said *H. M.* he the said *J. C.* did grant, release, and confirm unto the said *H. M.* and his heirs, a messuage and lands he purchased of one *P.* the said close called *Spring Close*, and the several closes of ground reserved in his own power, by the above deed of the 30th *September*, 1745, *To hold* unto, and to the use of the said *H. M.* his heirs and assigns, upon the following trusts:

In trust for the sole and separate use of the said *M.* wife of the said *J. C.* for and during the term of her natural life, and from and after her decease.

To such person or persons for such estate or estates, and for such uses, intents, and purposes as she the said *M. C.* notwithstanding her coverture by any deed or instrument in writing, or by her last will and testament in writing, duly executed in the presence of three or more credible witnesses, should limit, direct, or appoint; and in default of such appointment,

To the use and behoof of the heirs of the body of the said *M. C.* and in default of such issue,

To the use and behoof of the said right heirs of the said *M. C.* for ever.

In which said release are contained covenants, that the said grantor had good right to convey, and for quiet enjoyment, free from all incumbrances, (except only four several mortgages of the said premises made to *J. S.* Gent. for several sums, amounting in the whole to the sum of 600 *l.*

The said *J. C.* died intestate, indebted in other sums of money, some on bonds, and some on notes of hand, which his personal estate will be greatly insufficient to discharge.

The said *M. C.* (who had no issue by the said *J. C.*) has applied for the administration, and the *commons* have granted a commission, which was executed in the country, and returned; but before it was filed, and administration granted, a *caveat* was entered by the son of the said *J. C.* by his former wife, or by his next friend, he being under age.

Query. 1st. Whether the last marriage is not valid, and the incest only punishable in the time of the said *J. C.* and if the said *M. C.* is not entitled to the administration, and if any personals had been distributable, whether she would not have been entitled to a third?

Query 2d. The bond debts, exclusive of the mortgages, will exhaust the personals, and if the personals are appointed in discharge of

of thoſe debts, will not a court of equity charge the lands with the *ſimple contract* debts, as far as the chattels have beenapplied in diſcharge of the bond debt?

Query 3d. Be the marriage valid or not, whether the ſaid *M. C.* is not entitled in *fee* under the laſt ſettlement, *ſubject* only to the mortgage debts, which, it is preſumed, ſhe muſt have paid out of the eſtate, if the chattels had been ſufficient to diſcharge this, and all other the ſaid Mr. *C.*'s debts, and if the eſtate limited by the firſt ſettlement, and not the laſt, is not liable to make good the deficiency, though the ſaid *M. C.* knew of the firſt ſettlement, it being merely voluntary, and the laſt, on conſideration of her giving up *Spring Cloſe*, which it is preſumed is a valuable conſideration?

Query 4th. The ſaid *M.* is in poſſeſſion of part of the eſtate in the firſt ſettlement, limited to the child of the firſt marriage, and the tenants would attorn for the other part, if that is the eſtate out of which the overplus of the debts muſt be paid; would it not be adviſable for her to keep poſſeſſion, and to get the tenants to attorn and apply the rents in aid of the chattels for the benefit of the creditors as above, particularly if ſhe procures adminiſtration, or if ſhe conteſts the *caveat* with ſucceſs, will ſhe not be entitled to retain the expence of it out of the ſaid perſonal eſtate, before ſhe is compellable to apply it even for the benefit of the creditors, and how will it be moſt adviſable for her to act?

Opinion. I am of opinion, that the laſt marriage, being not impeached during the *coverture*, cannot be conſidered as a valid marriage, and that under the ſtatute of diſtributions, the ſecond wife will be entituled to the thirds of the perſonal eſtate. By the ſtatute 21 *H.* 8. *c.* 5. *ſ.* 3. the ordinary may grant adminiſtration to the widow, or to the next of kin, at his diſcretion; and therefore though he ſhould in this caſe grant the adminiſtration to the ſon of the firſt *ventre*, I think no *prohibition* would be granted, and on a return to a *mandamus*, he would only alledge the exerciſe of ſuch diſcretionary power, as between the wife and the ſon of the inteſtate, with reſpect to his granting the adminiſtration to either. Suppoſing the lands liable to the demands of the bond creditors, the court will certainly ſo marſhal the aſſets, that in caſe the bond creditors are ſatisfied out of the perſonal eſtate, the ſimple contract creditors will, *pro tanto*, ſtand in their place. As to the validity of the firſt ſettlement, and whether it is to be conſidered as merely voluntary or not, it is material that it ſhould be ſtated what intereſt the firſt wife had in the eſtate of which the recovery was ſuffered; for if it was the wife's eſtate, there was certainly a conſideration moving from her for entering into that ſettlement, and therefore it cannot be conſidered as voluntary againſt her iſſue. *It is alſo* not ſtated, whe-

ther *J. C.* the huſband was at the time of making ſuch ſettlement greatly indebted or not, which may make a difference as to the bond creditors, if their debts were contracted ſeveral years afterwards. As to the ſettlement made on the ſecond wife after marriage, it ſeems to have been made on a good conſideration, and therefore not liable to the demands of bond creditors; but the value of *Spring Cloſe* and the other premiſes is not ſtated, from which only a judgment can be formed, whether the ſaid ſettlement was colluſive or not. I cannot adviſe the ſecond wife to accept of an attornment of the eſtate limited by the firſt ſettlement, till I know whether the ſame is liable or not to the demands of the inteſtate's bond creditors. The expences of adminiſtration (if obtained) muſt be in the firſt place paid out of the inteſtate's perſonal eſtate, before the adminiſtratrix is compellable to apply it over for the benefit of the creditors.

February 17, 1767. *E. W.*

The firſt wife had no other intereſt in the ſaid eſtate comprized in the firſt ſettlement than her dower, which it is preſumed will not amount to any conſideration in favour of her iſſue.

The debts which the inteſtate owed, at the time of his firſt marriage, were inconſiderable, and perhaps will with difficulty be ſhewn, if at all; however, he did ſoon afterwards contract very conſiderable debts; but the majority, in order to purchaſe the eſtate included in the ſecond ſettlement; the whole, unleſs two or three bond debts of about 100 *l.* lately contracted, are comprized in the mortgage excepted in the ſecond ſettlement.

The premiſes in the ſecond ſettlement, without *Spring Cloſe*, may be worth 200 *l.* more than the 600 *l.* due on them, and *Spring Cloſe* is worth about 200 *l.* more, ſo that it is preſumed a valuable conſideration, as the 600 *l.* are apprehended to be a charge on the ſecond ſettled eſtate, and not the firſt.

The ordinary granted a commiſſion to ſwear Mrs. *C.* the adminiſtratrix, and ſhe was ſworn, and ſecurity given as required, and the commiſſion returned; but before the adminiſtration was ſealed, a *caveat* was entered, for which reaſon it remains in ſuſpence.

Opinion. The ſettlement made on the firſt wife, dated 30th *September*, 1745, appears to be a voluntary one with reſpect to the iſſue, as her giving up her dower is no conſideration; for under that ſettlement ſhe takes an eſtate for life after her huſband's death in the whole premiſes inſtead of her thirds. Conſidering the firſt ſettlement as merely voluntary, it will not effect the ſecond wife, tho' ſhe had notice of it, as ſhe is a purchaſer for a valuable conſideration, under the deed of 24th *January* 1761. As to the *query* how far the bond creditors have a right to come upon the premiſes comprized in the firſt ſettlement, it is a matter of ſome nicety,

and will depend on circumſtances. It has been ſaid, that in the ſtatute of 13 *Eliz. c.* 5. it is neceſſary to prove that the perſon conveying was indebted at the time or ſoon after the execution of the deed; for the recital of the ſtatute takes notice only of conveyances made to the end, purpoſe, and intent to delay, hinder, or defraud creditors; and the *enacting part*, with a reference to the preamble, declares only ſuch deeds to be void as are made to the intent and purpoſe before declared and expreſſed. Now Mr. *C.* does not appear to have been much indebted at the time of making the ſettlement of 1745, and therefore it can ſcarcely be ſaid, that that ſettlement was made with a view to defraud ſubſequent creditors; but on this part of the caſe, without being fully acquainted with all the circumſtances, I cannot undertake to give any poſitive opinion. *EW*

CASE.

IN the name of God, amen, I *E. G.* of *Shepton Mallet*, in the county of *Somerſet*, ſtocking-maker, being firm of body, and of perfect memory, do ordain and make this my laſt will and teſtament, this 17th day of *February*, 1723, revoking all former wills and teſtaments ever before by me made or declared, *viz.* and firſt, I commend my ſoul into the hands of the Almighty God, my Creator, and Jeſus Chriſt my Redeemer, and my worldly eſtate as followeth: *And whereas* I am ſeized in fee-ſimple of a meſſuage or tenement called *Wookey*'s tenement, in the pariſh aforeſaid, which tenement I give and bequeath unto my ſiſter *E.* for her natural life, paying unto my heirs hereafter mentioned the yearly rent of *five ſhillings*; and I give unto my ſiſter *K. P. ten ſhillings*; *Item*, I give all my goods and chattels unto my brother *R.*'s children, then living, equally to be divided betwixt them; *Item*, all my lands I am now poſſeſſed of in *Shepton Mallet*, I give, deviſe, and bequeath, unto my nephew *S. G.* whom I make whole and ſole executor of this my laſt will and teſtament.

The meſſuage called *Wookey*'s, deviſed to the teſtator's ſiſter *E.* is a ſmall part of his eſtate, and the other part conſiſts of lands which *E. G.* the heir at law of the teſtator claims, inſiſting on *S.*'s intereſt to be only an eſtate for life; ſome part of the lands belong to the meſſuage called *Wookeys*, and the other part is a diſtinct property.

Query. To whom does each belong, *S.* being dead, whether to his heir at law, or to the teſtator's ſiſter?

Opinion. I am of opinion, that *S.* took the lands in *Shepton Mallet* in fee-ſimple, with the reverſion in fee of *Wookey*'s tenement, expectant on *E.*'s eſtate for life; the *five ſhillings* rent is directed to be paid by *E.* to *S.* as the heir aftermentioned. This ſhews, that he meant the inheritance to *S.* and his heirs; he is alſo made whole and ſole executor.

Auguſt 12, 1767. *C. Yorke.*

CASE.

CASE.

J. S. by his will dated 13th *February*, 1751, deviſed, *int. al.* as follows:

Imprimis, I do give unto my nephew *H. L.* all the land I purchaſed at *Eaſtower*, of farmer *E. W.* and *J. G.* of *Stalbridge*, and now of *Henſtridge*. *Item*, I give unto *H. L.* the houſe and orchard in *Eaſtower*, formerly called *Hines*, and a cloſe called *Pittcloſe*. *Item*, I give unto *H. L.* all the lands of *R. M.* of *Eaſtower*, which I have now a mortgage upon; and if the mortgage was not paid off in *three years*, the ſaid *R. M.* was to give me a true title to his lands, which time will be expired at *Lady-day* next; but in caſe the above *H. L.* ſhould die without iſſue, then to my brother *M. S.* and his heirs for ever.

And in a ſubſequent part of the will, is likewiſe the following bequeſt:

Item, I give unto my couſin *F. L.* 200 *l.* to be paid out of my lands of *Eaſtower*, by her brother *H. L.* one year after my deceaſe.

The teſtator died in a few days after making his will, whereupon *H. L.* the deviſee, entered on all the ſaid eſtates deviſed to him as aforeſaid, (which are of the yearly value of about 60 *l.*) and held and enjoyed the ſame till his death, which happened in *February* 1767, (except the eſtate called *Maidman*, which he, about *four* or *five* years ago, delivered up to *Maidman* the mortgagor, who is now in poſſeſſion thereof, and took his bond, or ſome other ſecurity, for the money due for principal and intereſt thereon), and (it is preſumed) paid, or ſecured to be paid, the ſaid legacy of 200 *l.* to the ſaid *F. L.* as above mentioned.

The ſaid *M. S.* died in *L.*'s life-time, leaving iſſue a ſon, who is heir at law.

No recovery was ſuffered by *L.* to dock the intail, in caſe he had ſuch eſtate.

Query. What eſtate did the ſaid *H. L.* take by the ſaid deviſe?—Whether an eſtate in *fee*, by its being charged with the payment of the 200 *l.* legacy to the ſaid *F. L.* or an *eſtate-tail* (by the words in the will, "but in caſe the above *H. L.* ſhould die without iſſue, then *&c.* or an eſtate for life only? If he took an eſtate-tail, or for life, who is now entitled to the fee, he (*L.*) being dead? Does it belong to the heir at law of *M. S.* (he being likewiſe dead) by the words in the will, ("but in caſe the above *H. L.* ſhould die without iſſue, then to my brother *M.* and his heirs for ever?") Or does it revert to the heir at law of the teſtator

teſtator *J. J.* (no recovery having been ſuffered to dock the intail by *L.*) in caſe he had ſuch eſtate as before mentioned?

Opinion. I am of opinion, that *H. L.* took an *eſtate-tail* (ſubject to the charge of 200 *l.*) and he having died without iſſue, and without ſuffering a recovery, and *M. S.* alſo having died in the teſtator's life, ſo as that the deviſe of the remainder in *fee* never veſted in him, the heir at law of the teſtator is entitled to the lands.

Query. Who is now entitled to the money due on the ſecurities given by *Maidman* to *L.* in lieu of the money due to the teſtator *J. S.* on mortgage of *Maidman*'s eſtate, at his death as beforementioned.

Opinion. I think that *H. L.*'s repreſentatives are entitled to the money paid or ſecured by *Maidman*, in order to redeem the eſtate in mortgage.—If theſe lands had been abſolutely *foreclo ſed*, they would have been ſubject to the *entail* in the will; but as the *mortgagor* has redeemed, *L.* is entitled to the money.

Auguſt 12, 1767. *C. Yorke.*

CASE.

Auguſt 17, 1731. *R. B.* by his will of this date, gave, deviſed, and bequeathed, to *T. A.* and *J. B.* and their heirs, an annuity of 6 *l.* during the life of *H. S.* his daughter, the wife of *J. H.* her ſeparate uſe, to be paid by quarterly payments as therein ſpecified by his executor therein named, out of his real and perſonal eſtate, which ſhould or might come to his hands at the teſtator's deceaſe, and the teſtator gave, deviſed, and bequeathed, to *D. H.* his grand-daughter, from and after the death of the ſaid *S. H.* the yearly ſum of 5 *l.* for her life, to be paid by his executor, under ſuch directions, limitations, and by ſuch payments as were therein before mentioned; the firſt payment to commence on ſuch of the *feaſt days* as ſhould next happen after the deceaſe of the ſaid *S. H.* and of this his ſaid will appointed his ſon *R. B.* ſole executor and reſiduary deviſee and legatee, who by his will dated the ——————— day of ———————, gave and deviſed unto the ſaid *D. H.* ſpinſter, his meſſuage or dwelling-houſe, garden, orchard, and two cloſes of ground thereunto belonging, with the appurtenances, ſituate, lying, and being at *Lovington*, in the county aforeſaid, and his cloſe of ground called *Standbrook*, with the appurtenances, lying at *Galhampton*, within the pariſh of *North Cadbury*, *To hold* to her, her heirs and aſſigns for ever; and gave and deviſed unto the ſaid *D. H.* his four cloſes of ground called *Cocking Mill* and *Cocking Marſh*, with the appurtenances, lying and being in *Caſtle Cary*, *To hold* to her, her heirs and aſſigns for ever, ſubject to the payment of 6 *l. per annum* to the ſaid S. H. widow, for her

her life, pursuant to the above will, and appointed the said *S. H.* sole executrix and residuary devisee and legatee, who is since dead, leaving a will, but nothing to *D.*

D. is now married to one Mr. *H.* who claims the annuity of 5*l.* out of the real estate, devised by the last will to *S. H.* it being part of the estate charged with it by the first will; but the estates devised to *D.* in the last will being the other part, though of less value than these given to *S.* as the income of them exceeds the annuity.

Query. Is, or is not, the real or personal estate devised or bequeathed to *S.* liable to the payment of the 5*l.* annuity, or any, or what proportion of it, or will the devise to *D.* of part of the estate charged with it, as the income of the lands devised to her exceeds the annuity, be considered a satisfaction for, and destroy the annuity, or how is it to be raised?

Opinion. I am of opinion, that the real or personal estate given and devised by the will of *R. B.* to *S. H.* is not liable to the payment of any part of the annuity of 5*l.* given by the will of *R. B.* the father, to *D.* but that the beneficial devises to *D.* by the will of *R. B.* the son, will, and ought to be considered in equity, as a satisfaction of the said annuity of 5*l.*

October 5, 1767. *R. Perryn.*

CASE.

A. B. who died intestate, suffered a recovery of his whole estate in 1708, and by marriage settlement, dated in 1714, excepts out of the said settlement all that the lordship or manor of *C.* in the county of *D.* with all the rights and appurtenances thereof, together with the free *warren*; and also a moiety of the said hundred of *C.* in the said county of *D.* with the appurtenances; and also the free chappel, or chauntry of *E.* therein before-mentioned; and also except all those two messuages or tenements in *F.* and *G.* in the said settlement mentioned; and also two other messuages or tenements in *H.* and *J.* in the said settlement mentioned, or one of them, one whereof is called St. *R.* and now or late in the occupation of *L.* and the other now or late in the occupation of *M.*

Query. Whether by the words of the last mentioned exceptions, any land can, or do pass with the said last four messuages or tenements, though the tenants do hold lands with them?

Opinion. I think the lands usually held with the messuages, are part of the tenements excepted.

May 30, 1747. *Dudley Ryder.*

CASE.

CASE.

June 11 and 12, 1722. BY ſettlement on the intended marriage of *T. F.* and *S. B.* and which afterwards took effect, the freehold eſtates of the ſaid *T. F.* in *Nottingham* and *Bechley*, and the freehold eſtates of the ſaid *S.* in *Nervenden* and *Warthing* were conveyed to truſtees in manner following, *viz.*

To the uſe of the grantors, as to their reſpective eſtates, and to their heirs and aſſigns till the marriage ſhould take effect, and from the ſolemnizing thereof, then as to all the premiſes.

To the uſe of the ſaid *T. F.* and the ſaid *S.* for their natural lives, and the life of the longeſt liver of them.

Remainder *to the uſe* of the heirs of the body of the ſaid *T. F.* by the ſaid *S.* and for want of ſuch iſſue, then as to the eſtates in *Nottingham* and *Bechley*.

To the uſe of the ſaid *T. F.* his heirs and aſſigns for ever; and as to the eſtates in *Nervenden* and *Warthing*,

To the uſe of the heirs of the body of the ſaid *S.* by any other huſband; and for want of ſuch iſſue,

To the uſe of the ſaid *T. F.* his heirs and aſſigns for ever.

And the ſaid *T. F.* for the better maintenance of the ſaid *S.* in caſe ſhe ſhould ſurvive him, and for the better proviſion and maintenance of their children, *Covenants* to ſurrender, within twelve months after the marriage, certain copyhold eſtates,

To the uſe of the ſaid *T. F.* and the ſaid *S.* for their natural lives, and the life of the longeſt liver of them;

Remainder *to the uſe* of the heirs of the body of the ſaid *T. F.* by the ſaid *S.* and for want of ſuch iſſue,

To the uſe of the right heirs of the ſaid *T. F.* for ever.

By indorſement made before execution of the ſettlement, it was agreed, that the copyhold ſhould be ſurrendered after the death of the ſaid *T. F.* and the ſaid *S.*

To the uſe of ſuch child or children of the marriage as the ſaid *T. F.* ſhould by deed appoint; and for want of appointment,

Then *to the uſe* of the firſt ſon of the marriage; and for want of ſuch iſſue,

Then *to ſuch uſes* as directed by the ſettlement, after the deceaſe of the ſaid *T. F.* and *S.* his wife.

And it was further agreed, that the ſettlement ſhould be in bar of dower.

The copyhold was ſurrendered accordingly, and Mr. *T. F.* has not made any expreſs appointment.

April 20, 1725, By indenture to lead the uſes of a fine and recovery of the lands in *Nervenden*, thoſe eſtates are ſettled,

To the uſe of the ſaid *T. F.* and *S.* and the longeſt liver.

Remainder to ſuch perſons and eſtates as they, during their joint lives, or the ſaid *T. F.* only, after the deceaſe of the ſaid *S.* ſhould by deed or writing appoint; and for want of ſuch appointment,

To the uſe of the firſt ſon of the ſaid marriage.

Remainder to the heirs of the ſaid *T. F.* on the body of the ſaid *S.*

Remainder to the heirs of the body of the ſaid *S.*

Remainder to the right heirs of the ſaid *T. F.* for ever.

January 29, 1733, By indenture reciting the ſettlement of the 20th *April*, 1725, the eſtate of *Nervenden* is ſettled

To the uſe of the ſaid *T. F.* and *S.* for life, and the life of the longeſt liver,

Remainder to ſuch child or children of the marriage, and for ſuch eſtate, and ſubject to ſuch charges as the ſaid *T. F.* ſhould by deed or will appoint; and for want of ſuch appointment,

Subject to the uſes of the deed of the 20th *April*, 1725.

October —— 1736, By indenture and fine, the eſtates in *Nottingham* and *Bechley* are conveyed

To ſuch uſes as the ſaid *T. F.* ſhould by will appoint; and for want of ſuch appointment,

To the uſe of the ſaid *T. F.* and *S.* his wife, for their lives, and the life of the longeſt liver;

And after their deceaſes,

To the uſe of the right heirs of the ſaid *T. F.* for ever.

Mr. *T. F.* is dead, leaving the ſaid *S.* his widow, one ſon and four daughters.

September 3, 1764, The ſaid *T. F.* by his will, executed in the preſence of three witneſſes, gave

To the poor of *Nottingham* 5 *l.*

To *S.* his wife 100 *l.* payable in three months:

Alſo to his wife, over and above his farm lands in *Nervenden*, which he deſires ſhe may have and enjoy during her life, an annuity of 30*l.* payable half yearly, without deduction, and he binds and charges all his meſſuages in *Nottingham* and *Bechley* with payment thereof; provided that what he had ſo given his wife, together with his farm lands at *Nervenden*, ſhould be taken by her in full of all other claim and demand out of his eſtate by ſettlement, or otherwiſe, and that ſhe ſhould accordingly releaſe all other right, pretence, or claim to his eſtates, or any part thereof, within ſix months after his deceaſe, or otherwiſe ſhe ſhould not take any benefit under his will.

He gives to his daughters *M.* wife of *W. L.* and *E.* wife of *J. J.* 500 *l.* a-piece for their reſpective uſe, and not to be ſubject to the huſbands; *viz.* 300 *l.* a-piece, to be paid within twelve months after his deceaſe, and the remaining 200*l.* a-piece within twelve months after the death of his wife. In caſe of the death of either daughter before her legacy becomes payable, the legacy to be paid to the children of ſuch daughter at the age of twenty-one.

He gives to his daughters *M.* and *A.* 1000 *l.* a-piece, *viz.* 800 *l.* to be paid within twelve months after his deceaſe, and 200 *l.* within twelve months after the death of his wife.

He gives ſome other ſmall pecuniary and ſpecific legacies.

And all the reſt and reſidue of his real and perſonal eſtate (after his *juſt debts, legacies*, funeral expences, and charges of the probate are paid)

he

he gives, deviſes, and bequeaths to his ſon *C. F.* and to his heirs and aſſigns for ever, *ſubject* to, and charged with the payment of all his juſt debts, and the legacies before given to his wife, daughters, and others, and he thereby binds and charges all his meſſuages *&c.* with payment thereof.

Laſtly, He appoints his ſaid ſon, his daughters *M.* and *A.* and his nephew *C. F.* joint executors, and deſires that his wife may have the right of dwelling in his houſe, and the uſe of ſuch rooms, bed, bedding, linen, woollen, books, kitchen and other furniture, as ſhe may want or have occaſion to make uſe of for her own uſe, for her natural life.

Auguſt 6, 1766, The teſtator, by a codicil executed in the preſence of three witneſſes, reciting his will, and the gift and deviſe to his ſon of his real and perſonal eſtate, *ſubject* to the payment of his debts, funeral expences and legacies, and the appointment of executors, he revokes, alters, and makes void, ſo much, and ſuch part of his will as gives, deviſes, and bequeaths, his real and perſonal eſtate, or any part or parts thereof, unto his ſaid ſon *C.* and alſo ſuch parts of his ſaid will as makes and appoints his ſaid ſon *C.* and his daughters *M.* and *A.* and his nephew, joint executors; and he thereby declares that he intends, that ſo much, and ſuch part of his will as before mentioned, and intended to be revoked, ſhall be abſolutely void and of no effect; *provided* that all other parts of his ſaid will (except what was therein before mentioned, and intended to be revoked or altered) ſhould be and remain in full force.

By the ſaid codicil, he gives, deviſes, and bequeaths, all his meſſuages *&c.* and all his real and perſonal eſtate to his nephew *C. F.* and to his couſins *E. F.* and *J. J.* and to their heirs and aſſigns for ever, *in truſt* as after mentioned, and he appoints them joint executors.

And his will and deſire is, that his executors and truſtees ſhould in the firſt place pay all his juſt debts, funeral expences, charges of the probate, and all other charges incident to the ſame; *As alſo*, that they permit his wife to enjoy his farm and lands in *Nervenden*, and receive the rents and profits thereof to her own uſe during her life: that they ſhould alſo pay the annuity and legacy of all things given her by his will in its full extent; and that they ſhould, out of his eſtate and effects, raiſe and pay unto his daughters and others the legacies given them in the manner as by his will is directed; and if any of his daughters ſhould think proper to let their money lie after the ſame ſhould become payable, then his executors and truſtees ſhould give ſecurity for payment of the ſame out of his eſtate, with intereſt from the time they ſhall become payable, at 4 *l. per cent.*

And upon further truſt and confidence, that if his ſon *C.* ſhould owe or be indebted unto any perſon or perſons on bond or other ſecurity which might in anywiſe charge or affect the eſtate he ſhouldleave, or ſuch part or parts thereof as ſhould after the teſtator's death come to him, or fall into his hands, then he deſired his executors and truſtees, to hold and keep poſſeſſion of all his meſſuages *&c.* which ſhould remain after payment of his debts, legacies, and other payments directed to be paid by his will, and from time to time re-

ceive and pay the neat produce thereof, after all taxes, repairs, charges of receiving, and all other outgoings and deductions into the proper hands of his ſon *C.* if in *England*; or if abroad, then to ſuch perſons as he ſhould think proper to appoint, towards the ſupport and maintenance of his ſaid ſon whilſt he ſhould continue indebted as aforeſaid, and not to any perſon to whom his ſon ſhould aſſign, or tranſfer, or order, or direct to receive the ſame, or for or in diſcharge of any debts of his ſon, it being his full intent and meaning that none of his eſtate ſhould be applied towards payment of any of the debts of his ſaid ſon.

But if his ſon ſhould, at the time of his deceaſe, ſtand clear and be out of debt, and not owe any one perſon 50 *l.* or any two or more, or any greater number of perſons 150 *l.* in the whole, or if he ſhould be ſo, or further indebted, and ſhould afterwards pay off, compound, or otherwiſe diſcharge ſuch debts, ſo that the eſtate which the teſtator ſhould leave could not after the ſame ſhould come to his ſon's hands be in any wiſe charged with or affected thereby, or made liable to the payment thereof, then, and in either of the ſaid caſes, his will and mind is, and he orders and directs, that his executors and truſtees ſhould, within one year after his deceaſe, if his ſon ſhould be then clear and out of debt; or if the ſhould be then indebted to any perſon, and ſhould afterwards pay off or compound, and diſcharge ſuch debts ſo as aforeſaid, then within one year next after ſuch debts ſhould be ſo paid off, compounded and diſcharged, account for, pay and deliver all his perſonal eſtate, and convey and aſſure all his real eſtate to his ſon, and to his heirs and aſſigns for ever, *ſubject* to the payment of all ſuch legacies and ſums of money as he had given, ordered, and directed to be paid by his will.

He by his will impowers his executors to retain 20 *l.* a-piece for their trouble, and all coſts, and that they ſhall not be charged with more than they ſhall receive, or be liable for the acts of each other.

And if his ſon ſhould not be able to pay off, compound, or diſcharge his debts in his life-time, then *In truſt*, that his executors and truſtees ſhould within ſix months then next after the death of his ſon, account for and deliver his perſonal eſtate, and convey his real eſtate unto the heirs of the body of his ſon lawfully begotten; and if his ſon ſhould leave no iſſue of his body lawfully begotten, then *In truſt* to account for, and convey the ſame unto his four daughters, and their heirs equally as tenants in common, and not as joint-tenants.

The executors have proved the will. The ſaid *C. F.* the ſon is abroad in *South Carolina*, conſiderably indebted beyond the ſum ſtipulated by the codicil.

The perſonal eſtate is not ſufficient to pay the debts, legacies &c.

Query 1ſt. Is Mr. *T. F.*'s will or codicil an appointment either of the copyhold under the agreement indorſed upon the ſettlement, or of the eſtate in *Nottingham* and *Beckley*, under the deed of *October* 1736, of the eſtates in *Nervenden* and *Harthing*, under the deeds of

of *April* 1725, and *January* 1733? Or is the eldeſt ſon entitled in reverſion to the copyhold, and Mrs. *F.* to her intereſt for life in the other eſtates? And are thoſe eſtates, or the reverſions only, charged with the debts and legacies?

Opinion. Mr. *T. F.*'s powers of appointment over the ſeveral eſtates differ. The copyholds (after the eſtates to the huſband & *ux.*) by deed of 1722, he might appoint to the uſe of ſuch child or children of the marriage as he ſhould think fit. *Nervenden*, by the deed of 1733 (made in execution of the powers reſerved by deed and fine of 1725) after the eſtates to the huſband & *ux'*, he might appoint to children, and ſubject to charges *&c.* And *Nottingham* and *Bechley* are by deed and fine in 1736, ſubjected immediately to ſuch uſes as he ſhould appoint. Though he has not accurately executed theſe powers by ſubjecting the whole to debts and legacies, when it is plain, that the copyholds could not, under the terms of his power, be ſo appointed, yet I think, that he intended to diſpoſe of all his real eſtate, freehold and copyhold. Mrs. *F.* therefore muſt elect whether ſhe will renounce the will, or abide by it; that is, whether ſhe prefers *Nervenden* and the copyholds for life by the ſettlements to *Nervenden*, and the annuity, with the uſe of the dwelling-houſe and furniture as deviſed by the will. As to the daughters, it is for their benefit to take under the will, the ſettlement having provided nothing for them. And as to the ſon, I preſume it is for his benefit to abide by the will, becauſe if he takes under the ſettlement in contradiction to it, he can claim only *Nervenden* and the copyhold after his mother's death, and will forfeit *Nottingham* and *Bechley*. Upon the whole, the will and codicil of Mr. *F.* muſt take effect or fail by force of election in equity between the ſettlements and the will; and that election muſt be decided by Mrs. *F.* for herſelf, and by the ſon for himſelf. *Nottingham* and *Bechley* were abſolutely in the teſtator's power; ſo is *Nervenden* as againſt the ſon and the children. The copyholds being ſurrendered to the uſes of the ſettlement of 1722, which gives the teſtator a power to appoint by will, are ſurrendered to the uſe of his will *ſub modo*; and I think that he intended by the will to diſpoſe of them, together with all the reſt of his property real and perſonal.

Query 2d. What parts of the houſe and furniture is Mrs. *F.* entitled to the uſe of? and muſt ſhe keep the ſame in repair, and pay the taxes? She has at preſent two of her daughters unmarried, and with her, but they are both of age.

Opinion. Mrs. *F.* is entitled (if ſhe pleaſes) to the uſe and occupation of all the furniture in the houſe, as well as the houſe itſelf during her life. She is not bound to keep the furniture equally good, by replacing it from time to time as it ſhall decay. Reaſonable care ought to be taken of it in ſuch manner as per-

ſons ordinarily uſe their own with, which gradually wears out with time. The houſe ought alſo to be kept in tenantable repair, and ſhe muſt pay the taxes. If her unmarried daughters agree to live with her, the point of contribution and maintenance may be ſettled between them.

Query 3d. How can the truſtees raiſe the fortunes given to the daughters? or what ſecurity muſt they give for payment of theſe fortunes, in caſe the daughters ſhould think proper to let them lie?

Opinion. I would adviſe the truſtees in the will to make a ſecurity for the daughters truſtees, by demiſing a term of 500 years to other truſtees for raiſing the ſame by mortgage, or out of the rents and profits. This ſecurity ought to be made on the *Nottingham* and *Bechley* eſtates, over which the teſtator Mr. *T. F.* had an abſolute and immediate power of appointment, to ſuch uſes as he ſhould think fit. Till the principal ſums ſhall be raiſed, intereſt muſt be paid at the rate of 4 *per cent.*

Query 4th. What aſſurance are the truſtees to expect, or can they have, that the ſon is not in debt beyond the ſums ſtipulated by the codicil?

Opinion. The father has by the will given to the ſon the fee-ſimple of all the eſtates; and by the codicil he has, in my opinion, annexed a condition repugnant to the eſtates given; for in caſe the ſon is indebted beyond 150 *l.* the truſtees are directed to hold the poſſeſſion, and pay or remit the annual profits to the ſon (prohibiting the payment of any of the ſon's debts by the truſtees out of ſuch profits, or out of the teſtator's eſtates), notwithſtanding which the father ſtill leaves the abſolute inheritance in his ſon. And in caſe the ſon ſhall be clear from debts at his deceaſe, or ſhall afterwards compound and pay them off, then the truſtees are directed to convey all the real eſtates to the ſon. This diſpoſition is inconſiſtent, and I think impoſſible. If a man gives lands in fee-ſimple to another, he cannot ſay, that the judgments and mortgages of that tenant in fee-ſimple ſhall not bind thoſe lands. And if this be law as to a legal eſtate in fee, the ſame rule is applicable to a truſt.

Query 5th. In general, the truſtees deſire your advice how to act?

Opinion. I do not know what evidence or aſſurance can ſatisfy the truſtees, as to the *quantum* of the ſon's debts, ſo as to induce them, after the debts and legacies are paid, to convey and let him into poſſeſſion. It is ſo eaſy to ſecret debts and incumbrances for a time, and for a particular purpoſe, that the truſtees will obtain ſatisfaction on that head with difficulty. Beſides, if debts are cleared and compounded one day, in order to procure a conveyance,

veyance, purſuant to the will, the whole eſtate may be incumbered and ſold the next day. Upon the whole, therefore, as the prohibition is nugatory and repugnant to the eſtates deviſed, both in law and equity, and as the ſon may incumber his eſtate, even though the truſtees hold the poſſeſſion, and may alſo waſte and incumber by future acts, even though he ſhould literally comply with the condition, even for the ſake of a conveyance from the teſtator's truſtees. I cannot encourage them to hope much good from a truſt thus conceived; but in duty to the teſtator's will, and in prudence to themſelves, conſidering the unfortunate diſſipation of the ſon's conduct at preſent, I would adviſe them, unleſs he and the mother and ſiſters can ſettle every thing by amicable indenture of agreement, to procure the mother and daughters to file a bill for taking the accounts *&c. &c.* and for general directions in *Chancery*, making the ſon a party to the ſuit, and ſerving him with a *ſubpœna* and notice of the ſuit where-ever he is abroad.

Query 6th. Whether the truſtees have power to cut timber?

Opinion. The eſtate limited in fee to the truſtees, and the nature of their truſts, warrant the power of cutting timber, if it be the moſt eligible means of performing theſe truſts; but under all the complicated circumſtances of this caſe I cannot adviſe them to do it, without the indemnity of a decree, and the report of a maſter in *Chancery*, as to the expediency, and the *quantum* confirmed by the court.

Auguſt 22, 1767. *C. Yorke.*

CASE.

E. being leſſee of a houſe in St. *Martin's-Street*, under the uſual covenants, aſſigned the leaſe for a valuable conſideration to *F. E.*

About 23d *January* laſt *F. E.* was arreſted, and carried to the *King's Bench* priſon, and having remained there two months, on the 24th *March* a commiſſion of bankruptcy iſſued againſt him, and he was declared a bankrupt; the act of bankruptcy was, his being the two months in priſon.

About the latter end of *February E.* ſent his wife to one *W. E.* a debtor to him in about 20 *l.* on a book debt, with a receipt for the book debt; in exchange for this, *W. E.* ſent his note of hand payable to the bankrupt, or order, three months after date.

With this note indorſed by the bankrupt, the wife was ſent to the agent for the landlord of the houſe, who gave a receipt for it to this effect, *viz.* "Which, when paid, will be in full for half a year's "rent due at *Chriſtmas* then laſt."

At the time of the bankruptcy there were not any goods upon the premiſes; but the aſſignees under the commiſſion having ſince ſold the leaſe, the houſe is now furniſhed, and the note not being paid, the landlord has threatened a diſtreſs not only for the rent accrued ſince the bankruptcy, but for the rent for which the note was intended as a diſcharge, and which accrued before the bankruptcy. The aſſignees are ready to pay the rent accrued ſince the bankruptcy; and it is not doubted but that *W. E.* and the agent for the landlord had notice both of the impriſonment and the inſolvent circumſtances of *F. E.*

Query. Can the landlord recover againſt *W. E.* the money due upon this note? if he can, will *W. E.* be liable to pay it again to the aſſignees? or can the landlord make his election, and by giving up the note to the aſſignees maintain a diſtreſs, or recover by ejectment the rent due previous to the bankruptcy, and the iſſuing of the commiſſion?

Opinion. There is no doubt but the landlord may diſtrain the goods of the vendee, unleſs the receipt which he gave to *E.* be a bar to it. The note for which that receipt was given was not tranſferred to him by the indorſement, therefore I underſtand the receipt to be an acknowledgment of ſatisfaction only in the caſe of that note being paid voluntarily, which for want of an indorſement by a perſon having power to aſſign he could not compel the payment of. I conſider *E.* as a bankrupt from the day of the arreſt. If the landlord may diſtrain for the rent, the aſſignees muſt make it good to their vendee; but I think the landlord muſt in ſuch caſe give up the note to the aſſignees, who might maintain *trover* for it. The note being in poſſeſſion of the aſſignees, they may recover the 20 *l.* againſt *W. E.* if they chuſe to ſue upon that rather than the book debt; but they cannot have both. Upon the whole therefore, I think the juſtice of the caſe is, that the aſſignees ſhould pay the landlord his rent, and receive the 20 *l.* of *W. E.*

November 21, 1767. *E. Thurlow.*

CASE.

CASE.

January 24, 1723. BY indenture of four parts, between Sir *T. R.* of the firſt part, *C. R.* his ſiſter, of the ſecond part, *W. L.* of the third part, and Serjeant *S.* and *E. H.* Eſq; of the fourth part.

It was witneſſed, that in conſideration of a marriage intended between the ſaid *H.* and the ſaid *C.* the ſaid Sir *T.* covenanted with *H.* to pay within a year after the marriage, 3000 *l.* with intereſt from the marriage to ſaid *S.* and *H.* or ſuch other perſons as the ſaid *H.* and his intended wife ſhould direct for the purpoſes after mentioned.

And the ſaid *H.* covenanted with the ſaid Sir *T.* that the ſaid *H.* will pay within a year after the marriage 3000 *l.* to ſaid *S.* and *H.* or ſuch perſons as Sir *T.* and *C.* ſhall direct for the purpoſes after mentioned.

And it was declared between the parties, that the ſaid ſums of 3000 *l.* and 3000 *l.* ſhall be laid out in the purchaſe of freehold or copyhold lands or hereditaments, and be ſettled thus, *viz.*

To the uſe of *H.* for life, *Remainder* to the ſaid *C.* for life, remainder to the firſt and other ſons of the marriage, remainder to the daughters as tenants in common, remainder to the right heirs of *H.*

Proviſoe for enabling the ſaid *H.* and his intended wife, or the ſurvivor, to charge the lands with 2000 *l.* for the younger children.

Proviſoe alſo, that the ſaid 3000 *l.* and 3000 *l.* or any part thereof, may be laid out in the purchaſe of any freehold eſtates, to be ſettled to the ſame uſes and purpoſes as near as may be, as are before limited and expreſſed, and *ſubject* to the ſame powers and proviſoes.

And it was agreed, till ſuch purchaſe was made, that the ſaid 3000 *l.* and 3000 *l.* when paid, ſhall be depoſited for ſafe cuſtody upon lands or other ſecurities as the ſaid *H.* and *C.* or the ſurvivor ſhall direct, in the name of Sir *T. R. S.* and *H.* and the ſurvivor, his executors or adminiſtrators.

And it was agreed that the truſtees ſhould not be chargeable with any loſs of the money ſo depoſited, lent, or laid out, nor with the receipt of any other monies than what they actually received, nor one with the receipt or loſs of the other, and that the truſtees may deduct out of the 6000 *l.* their charges and expences.

A bond was given from *H.* to Sir *T. R.* Serjeant *S.* and Mr. *H.* in 400 *l. conditioned* for *H.* leaving at his death to his younger children 2000 *l.*

Note, The above mentioned marriage took effect, and

In 1729, There then being living of that marriage three ſons, *T. R.* and *R.* 4000 *l.* to wit, 300 *l.* part thereof, paid by Sir *T. R.* and 1000 *l.* remainder thereof paid by *H.* was laid out in the purchaſe of an eſtate held by leaſe of the Dean and Chapter of St. *Paul's*, *London*, for *twenty-one years*, *And alſo* in certain freehold lands, which leaſehold and freehold were aſſigned and conveyed to *S.* and *H.* *to the uſes and upon the truſts* in the marriage articles.

In *Hilary* term, 7 *Geo.* 2. A judgment in debt in the *Common Pleas* for 4000 *l.* was confeſſed by Mr. Serjeant *S.*

The 12th *Feb.* 1773, by a note ſigned by Mr. Serjeant *S.* Sir *T. R.* and Mr. *H.* taking notice of the above mentioned articles, and that 2000 *l.* (part of the 3000 *l.* to be paid by Mr. *H.* in purſuance of thoſe articles) remained unpaid, for ſecurity whereof the ſaid judgment was confeſſed, *It was agreed*, that upon payment of the ſaid 2000 *l.* by Mr. *H.* the ſaid judgment ſhall be vacated.

The 27th *May*, 1734, A leaſe from the Dean and Chapter of St. *Paul's* was granted to Mr. Serjeant *S.* in conſideration of a ſurrender of the leaſe above mentioned, to be purchaſed of the ſame premiſes for *twenty-one years* from *Lady-day* laſt at 30 *l. per annum.*

The 9th *January*, 1734, A bond was given from Mr. *H.* to Mr. Serjeant *S.* in 400 *l.* penalty, *conditioned* for the indemnifying the Serjeant from the rent and covenants in the above leaſe.

Note, On the above judgment no execution has been taken out, nor any other method taken to compel Mr. *H.* to pay the 2000 *l.* ſecured by the ſettlement, nor has any part of it been paid.

Mrs. *H.* is long ſince dead, having left iſſue of the marriage one ſon only, now living, and Mr. Serjeant *S.* who ſurvived Mrs. *H.* is alſo lately dead, and Mr. *H.* is now living, and apprehended to be in circumſtances to anſwer the 2000 *l.* now due from him, and Mr. Serjeant *H.*'s executor is apprehenſive left the not proſecuting Mr. *H.* to fully perform the covenant in his marriage ſettlement from 1723 to 1734, ſhould be deemed in equity ſuch a groſs neglect as to charge the repreſentative of Mr. *H.* and Mr. Serjeant *S.* with the deficiency, in caſe Mr. *H.* be now inſolvent, and the not taking out execution on the judgment ſhould be deemed ſuch a groſs neglect in the Serjeant or his repreſentative, as to make him perſonally liable.

Sir *S. R.* has lately requeſted Serjeant *S.*'s repreſentative to take out execution on the above ſettlement, which he has conſented to, if Sir *T.* will indemnify him.

Query. As this caſe is ſo circumſtanced, how far and in what manner will Mr. Serjeant *H.*'s repreſentative be anſwerable for any ſuch neglect as aforeſaid, or how otherwiſe can he purge or excuſe ſuch neglect, and, in general, pleaſe to adviſe what is proper and adviſable for him now to do in this caſe?

Opinion. I am of opinion, that the repreſentative of Mr. Serjeant *S.* will not be anſwerable for a groſs neglect in his teſtator; for the 3000 *l.* was not originally demandable by Serjeant *S.* and *H.* ſince it is ſtated to have been made payable either to them or to ſuch perſons as Sir *T. R.* and his ſiſter ſhould direct, and a payment

ment made to any other perſon in purſuance of ſuch direction would undoubtedly have been a good payment. And, beſides, if the parties intereſted in the money, or any one on their behalf, had even brought a bill againſt the truſtees to compel them to ſue for the money, or to take out execution on the judgment, Mr. Serjeant *S.* and *H.* would, even in ſuch caſe, only have been obliged to permit their names to be made uſe of in any action or ſuit which the other perſons might think proper to commence or carry on for the recovery of the money, upon being properly indemnified; and as this was all that the truſtees would have been obliged to do by compulſion, I conceive they would be under no obligation as truſtees to put themſelves to expence, by engaging in a law-ſuit without ſuch indemnity, eſpecially as the truſtees are made anſwerable only for what they ſhall actually receive.

Middle-Temple, Feb. 15, 1739. *Tho. Clarke.*

Note. Mr. *H.* is ſince become a bankrupt.

Query. Ought Mr. Serjeant *S.*'s repreſentatives to make a claim of this debt before the commiſſioners, or is it more adviſable for him not to concern himſelf about the payment of the money?

Opinion. The claiming the debt before commiſſioners may be of ſervice to the infant ſon (by procuring him ſome proviſion) and cannot, I conceive, be prejudicial to Mr. Serjeant *S.*'s repreſentatives, and therefore I think it will be no ways improper to make ſuch a claim of the judgment debt before the commiſſioners.

July 15, 1740. *Tho. Clarke.*

Caſes, with the opinion of the judges, on ſeveral points relating to the window tax.

CASE *of a houſe left in the care of a ſervant only.*

uſſex, Steyning, AT a meeting of the commiſſioners, for putting in *ug.* 23, 1750. execution the act relating to the duties on ouſes, windows, and lights, Sir *G. M. G.* Bart. appealed againſt a arge of *ſeventy-four* windows in his houſe called *Highden*, and it ppeared to us, that the ſaid houſe is not inhabited, but left to the re of a ſervant, who lives in part of the premiſes called a dog-kenel, now converted into a houſe, and taxed, and ſuch ſervant does not dge in the ſaid *Highden* houſe, but occaſionally airs the houſe, and kes care thereof; WE are of opinion, that the ſaid *Highden* houſe

is chargeable with the ſaid duty, and therefore we gave no relief to the ſaid appellant; but he being diſſatisfied with our determination, required us to ſtate the caſe ſpecially, to be tranſmitted to one of the judges of the court of *King's Bench*, or *Common Pleas*, or to one of the barons of the *Exchequer*, for his opinion thereon, which we have here ſtated accordingly. Given under our hands the day and year above-written.

J. B.
E. H.
T. L.

Opinion. We are of opinion, the determination of the commiſſioners is right.

W. Lee.	*M. Foſter.*
J. Willes.	*E. Clive.*
T. Parker.	*S. S. Smythe.*
M. Wright.	*R. Adams.*
T. Deniſon.	*H. Legge.*

CASE *Of two houſes made into one by communication.*

Kent, St. *Paul's*, *Deptford.* MRS. *F.* holds two houſes which adjoin cloſe to each other, and have ſeparate and diſtinct ſtair-caſes, *And alſo* diſtinct avenues from the ſtreet to the houſe, and ſhe was charged by the aſſeſſors for them as two ſeparate houſes; but the ſurveyor for the crown finding, on his inſpection, that there is a communication between the two houſes by a door-way on the ground-floor, which is conſtantly made uſe of, ſurcharged her for one entire tenement, againſt which ſhe appealed to the commiſſioners, who allowed her appeal.

J. S.
W. H.
W. S.

Opinion. We are of opinion, that the determination of the commiſſioners is wrong.

W. Lee.	*M. Foſter.*
J. Willes.	*E. Clive.*
T. Parker.	*S. S. Smythe.*
M. Wright.	*R. Adams.*
T. Deniſon.	*H. Legge.*

CASE

CASE *Where the appellant added one light in order to reduce the charge on the number of windows.*

County of Worceſter. ON an appeal to the commiſſioners from a charge made by the ſurveyors of the windows, the following caſe is ſtated at the ſurveyor's requeſt, purſuant to the act of parliament in that caſe made and provided.

The appellant is by the aſſeſſors of the pariſh charged *two ſhillings* for his houſe; by the ſurveyors he is charged with *ten windows*; he ſaith he hath but *nine windows*, having fixed between two of the windows a piece of glaſs of about four inches in breadth, and eleven inches in length.

To this charge of the ſurveyor, the appellant hath appealed to the commiſſioners, ſuggeſting he ought not to be charged more than *two ſhillings* for his dwelling houſe; and the commiſſioners have determined, that the appellant is not liable to be charged any more than *two ſhillings* for his houſe, and have taken off the charge made by the ſurveyor; with which determination the ſurveyor is diſſatisfied, apprehending the ſame to be contrary to the true intent and meaning of the ſtatute in that caſe made and provided.

We therefore the major part of the commiſſioners preſent at the ſaid appeal, at the requeſt of the ſurveyor, have ſtated and ſigned this caſe, and humbly ſubmit it to your lordſhips opinion, whether the *ten windows* ought, or ought not, to be charged?

R. M.
E. S.

Opinion. We are of opinion, that this is a manifeſt evaſion of the act, therefore the determination of the commiſſioners is wrong.

Mansfield.
J. Willes.
T. Parker.
T. Deniſon.
M. Foſter.

Serjeants-Inn, June 27, 1757.

The determination of the judges, that the owners of all houſes, let out to inmates, ſhould pay the duty on houſes and windows chargeable thereon.

CASE.

Middleſex, to wit. AT a meeting of the commiſſioners of the land-tax, as commiſſioners for putting in execution ſeveral acts of parliament, made and paſſed for granting to his Majeſty ſeveral rates and duties upon houſes, windows, or lights &c. at the *White-Hart* tavern, in *Holborn*, on *Wedneſday, February* the 26th, 1755, Mr. *S. S.*

appealed againſt the window light tax, aſſeſſed on his eight houſes in *Spread-Eagle-Court, Gray's-Inn-Lane*, in the pariſh of St. *Andrew's, Holbourn*, in the county of *Middleſex*, let out unto tenants, containing ten windows or more in each houſe; and Mr. *P.* one of the collectors for the window light duties, and one of the overſeers of the poor for the ſaid pariſh, being examined touching the matter in queſtion, informed the board, that the landlords of theſe houſes doth not pay to church or poor's rates, but pays other pariſh rates for the ſame, as ſcavenger and watch. The commiſſioners preſent were of opinion, that the circumſtances or merits of the ſaid appeal was within the meaning of the act of parliament, made and provided in that behalf, and therefore allowed the ſaid appeal, and diſcharged the ſaid tax by virtue of the following clauſe in the ſaid act, folio 128, to wit,

"And be it enacted and declared by the authority aforeſaid, that "where any dwelling houſe is, or ſhall be let in different apart-"ments to ſeveral perſons, and the landlord of ſuch houſe pays "other taxes and pariſh rates for the ſame, ſuch landlord ſhall be "deemed and taken to be the occupier of ſuch dwelling houſe, and "be charged with, and liable to pay the ſaid rates and duties for "the ſame, as one entire houſe." Upon which Mr. *G.* ſurveyor for the crown, being preſent, and diſſatisfied with the above determination of the commiſſioners, deſired the caſe might be ſtated to be laid before the judges for their opinions thereon, alledging, that by the following clauſe in the ſaid act of parliament, the ſaid appellant ought to pay the tax aſſeſſed on his houſes abovementioned, to wit.

"Provided always, and be it further enacted and declared, that "ſuch dwelling houſe only, where the occupier or occupiers thereof "by reaſon of his, her, or their poverty only, is or are exempted "from the uſual taxes, payments, and contributions, towards the "church and poor, ſhall be conſtrued or underſtood to be exempted "out of this act, or diſcharged of the rates and duties hereby grant-"ed, and that only in ſuch caſes where the dwelling houſes ſo occu-"pied are cottages, not containing above *nine windows* (or lights) "in the whole, any thing herein contained to the contrary notwith-"ſtanding." Folio 125.

"And be it alſo enacted and declared, that where any houſe ſhall "be inhabited by two or more perſon or perſons, or family or fami-"lies, ſuch houſes ſhall nevertheleſs be ſubject to, and ſhall in like "manner, pay the rates and duties charged on houſes, windows, or "lights, by this act, as if ſuch houſe was inhabited by one perſon or "family only." Folio 127.

Query.

Quere, Whether the ſaid *S. S.* is chargeable for the ſaid premiſes by virtue of the abovementioned clauſes or not.

J. R.
P. F.
W. W.
J. C.
R. F.

Opinion, We are of opinion, that the determination of the commiſſioners is wrong.

Mansfield.
J. Willis.
T. Parker.
T. Denniſon.
M. Foſter.

Serjeant's-Inn, June 27, 2757.

CASE *Relating to work-ſhops, ware-rooms* &c. *in the hundred of* Pottern Canning *&c. Com. Wilts.*

Wiltſhire, to wit. AT a meeting of the commiſſioners for hearing and determining the appeals upon the tax on houſes, windows, and lights, for the hundred of *Pottern* and *Cannings*, and borough of *Deviſes*, in the ſaid county, on the 10th day of *February*, 1757, *S. P.* of the ſaid borough of *Deviſes*, clothier, being poſſeſſed of, and occupying a building in the ſaid borough, lying under, or covered with one roof; which building is four ſtories high, *viz.* A ground floor, and three ſtories over that. Part of the ground floor and chambers of the ſaid dwelling-houſe, are uſed for habitation and dwelling, (in which part are eighteen windows); but the other part of the ground floor and chambers of the ſaid building are uſed for work-ſhops for carrying on the clothing trade, and for manufacturing woollen cloth, and for ware-rooms, and ſtowing wool and other materials in carrying on the woollen manufacture, and not as a dwelling-houſe, or for lodging or habitation; and ſome of the ſaid ware-rooms lie over that part uſed for a dwelling-houſe, (in which part uſed for working-ſhops and ware-rooms are ſixteen windows). There is an entry or paſſage on the ground floor of the ſaid building, which runs through the middle of the ſaid building, and which is the only entrance into, or from the ſaid building, which divides the part uſed for a dwelling-houſe from the part uſed for ſhops and ware-rooms, *viz.* the entrance into the ſame paſſage is by one door out of the ſtreet, and out at another door to the yard or backſide belonging to the ſame building. In the ſame entry or paſſage there is one door on the right hand, leading into that part of the building which is uſed for a dwelling-houſe, and another on the left hand leading into that part of the building which is uſed for work-ſhops

and

and ware-houſes. There is a cloſe partition, both above and below, between the part uſed for a dwelling-houſe, and the part uſed for work-ſhops or ware-houſes; and there is no communication between the dwelling-houſe, working-ſhops, and ware-houſes, either above or below ſtairs (except by the aforeſaid entry or paſſage) there being a ſtair-caſe in the work-ſhops below ſtairs, for going up into all the ware-rooms above ſtairs. The ſaid *S. P.* was charged by the aſſeſſors in the parochial aſſeſſment only for the above *eighteen windows*, in that part of the ſaid building uſed for a dwelling-houſe; but the ſurveyor of this diviſion, on his ſurveying, finding *thirty-five windows* in the ſaid building, *viz. eighteen* in the dwelling-houſe, and *ſeventeen* in that part made uſe of for work-ſhops, and ware-houſes, (conceiving that as all the ſaid building was under one roof, all of it ought to be looked upon as part of a dwelling-houſe) left notice in writing with the ſaid *S. P.* that he intended to make a ſurcharge on him for *ſeventeen windows*; againſt which ſurcharge the ſaid *S. P.* made his appeal; and on hearing the ſaid appeal we were and are of opinion, that the *ſeventeen windows* in that part of the ſaid building which is uſed for work-ſhops and ware-houſes only, are not chargeable by the ſaid act, the ſame being ſeparate, diſtinct, and entire, from that part uſed for a dwelling-houſe and habitation, and therefore we have not confirmed the ſurveyor's charge.

Mr. *J. T.* the general ſurveyor of this diviſion, declaring himſelf diſſatisfied with our ſaid determination, and requiring us to ſtate ſpecially and ſign the caſe aforeſaid, in order that it might be tranſmitted to one of the juſtices of his Majeſty's court of *King's Bench* or *Common Pleas*, or to one of the barons of his Majeſty's court of *Exchequer*, we do hereby humbly certify the ſame accordingly.

J. S.
W. L.
G. W.

Opinion. We are of opinion, that the determination of the commiſſioners is wrong.

Mansfield.
J. Willes.
T. Parker.
T. Deniſon.
M. Foſter.

Serjeant's-Inn, June 29, 1757.

CASE.

CASE *On a ſurcharge of windows &c.*

Colcheſter, Eſſex, 1758. MR. *R. D.* ſtands charged by the aſſeſſors for *fourteen windows*, or lights, and the ſurveyor by his ſurcharge has raiſed him to *twenty windows*.

Upon appeal this day the caſe appears to be, that the increaſe of *ſix windows* is occaſioned by charging two ſhop windows, two warehouſe windows, one compting-houſe window, and one garret window, uſed only for the laying in of timber and boxes in his trade.

The commiſſioners apprehend, that Mr. *D.* ſhould ſtand charged, according to the original aſſeſſment, at *fourteen windows*; for that in the enumeration in the act, no ſhops, warehouſes, or compting-houſes, are directed to be aſſeſſed; though places of leſs conſequence, ſuch as waſh-houſe, pantry, landry, larder *&c.* are.

Wherefore their determination is, that Mr. *D.* ſhould ſtand charged for *fourteen windows* or lights; with which determination the ſurveyor declares himſelf diſſatisfied.

P. S.
S. W.
J. G.
R. K.
W. S.
J. W.

Opinion. We are of opinion, that the determination of the commiſſioners is wrong.

Mansfield.
J. Willes.
T. Parker.
T. Denſon.
M. Foſter.
E. Clive.
S. S. Smythe.
R. Adams.
H. Bathurſt.
E. Wilmot.
W. Noel.

Serjeants-Inn, June 19, 1759.

CASE.

Newcaſtle upon Tyne, AT a meeting of the commiſſioners for hear-town and county. ing and determining appeals upon the window tax on houſes, windows, and lights, for the ſaid town and county, on the firſt day of *September*, 1758.

J. W. of *Pilgrim Quarter*, in the ſaid town, (upon notice given to the ſurveyor of the ſaid town) appealed upon a charge of *fifty-two windows*, or lights, charged by the *parochial* aſſeſſors upon his dwelling-houſe, with the appurtenances; upon which notice, a ſurvey being made by the ſaid ſurveyor, the ſtate of the caſe appeared as follows, *viz.*

From the ſtreet there is only one entrance into the dwelling-houſe, and into a ſquare court or yard backward; in which court or yard is a building adjoined to the ſaid dwelling-houſe, but not ſo high as the ſaid dwelling-houſe by one ſtory; which building is not lodged in, but made uſe of as printing-offices and ware-rooms. The ſaid building is three ſtories high, *viz.* one ground-floor, and two ſtories over; in each of which was a communication between the dwelling-houſe and the ſaid building upon the landings of each ſtory; which communications are now built up. That there is now, no way into the ſaid printing-offices and ware-rooms, or any part of them, but by a ſtair-caſe out of the abovesaid court or yard. That underneath part of the ſaid printing-offices and ware-rooms, on the ground-floor, is a brew-houſe, and a back-kitchen having a fire-grate and pot fixed, and a dreſſer and ſhelves, though alledged by the appellant not to be made uſe of as a back-kitchen, but as a ware-room. Underneath another part of the ſaid building is an office for keeping of accounts. Into which brew-houſe, back-kitchen, and office, on the ground-floor, are ſeparate entrances from the paſſage in the ſaid court: in which ſaid building are *twenty-five windows* or lights, of which the appellant ſaith he ought to be relieved, as a ſeparate building from his dwelling-houſe, the communication being built up between the ſaid offices and dwelling-houſe: but we, the majority of the commiſſioners preſent, from the ſtate of the caſe above, were and are of opinion, That the windows and lights in the ſaid building are *chargeable*, and therefore did not relieve the ſaid appellant; who being diſſatisfied with our determination, requeſted a ſtate of the caſe to be tranſmitted to one of his Majeſty's juſtices of the court of *King's-Bench* or *Common-Pleas*, or to one of the barons of his Majeſty's court of *Exchequer*: we do hereby humbly certify the ſame accordingly. Witneſs our hands.

R. S.
C. S.
W. P.
H. E.
W. C.

Opinion. We are of opinion, That the determination of the commiſſioners is right.

Mansfield.
J. Willes.
T. Parker.
T. Deniſon.
M. Foſter.
E. Clive.
S. S. Smythe.
R. Adams.
H. Bathurſt.
E. Wilmot.
W. Noel.

Serjeants-Inn, June 19, 1759.

CASE.

C A S E.

County of *Leiceſter.* MR. *H.* is now in poſſeſſion (as heir at law of his late father) of two houſes, which were ſeparate purchaſes, made by his ſaid father; and one of which houſes had been for many years inhabited by Mr. *H.*'s late father and himſelf till the year 1747, when Mr. *H.* pulled down one of the ſaid houſes, then being in the occupation of *J. B.* and rebuilt the ſame: and which ſaid two houſes adjoin cloſe to each other, and have ſeparate and diſtinct ſtair-caſes, and alſo different avenues from the ſtreet to the houſe, and there is an inward communication between the two houſes by a door-way on the ground-floor, which is conſtantly made uſe of: and Mr. *H.* ever ſince the ſaid two houſes were in his poſſeſſion, has been charged (as well by the aſſeſſors of the window-tax as collectors of the land-tax, and overſeers of poor and pariſh rates) for them as two ſeparate houſes; and the ſame have always been, and are now, diſtinguiſhed or known as two houſes.

Mr. *H.* the appellant, is by the aſſeſſors of Mr. Alderman *B.*'s ward, in *Leiceſter*, charged for the ſaid premiſes to the window-tax for one entire tenement.

To this charge of the aſſeſſors and ſurveyors of the diviſion aforeſaid, Mr. *H.* the appellant, hath appealed to the commiſſioners, and the commiſſioners have determined, that the appellant is liable to be charged for one entire tenement, and not for two ſeparate houſes to the window-tax; with which determination Mr. *H.* the appellant, is diſſatisfied.

We therefore, the commiſſioners preſent at the ſaid appeal, at the requeſt of the ſaid Mr. *H.* the appellant, have ſtated and ſigned this caſe, and humbly ſubmit it to your lordſhips opinion, Whether the ſaid Mr. *H.* is chargeable for the ſaid premiſes to the window-tax for one entire tenement, or for two ſeparate houſes.

J. H. Mayor.
T. G.
T. S.

Opinion. We are of opinion, That the determination of the commiſſioners is right.

Mansfield.
J. Willes.
T. Parker.
T. Deniſon.
M. Foſter.
E. Clive.
S. S. Smythe.
R. Adams.
H. Bathurſt.
E. Wilmot.
W. Noel.

Serjeants-Inn, June 19, 1759.

CASE.

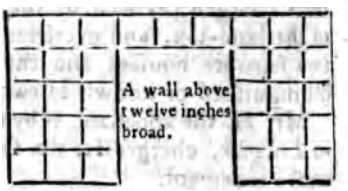
City of *Oxford*, in the county of *Oxford*.

UPON an appeal to the commiſſioners, from a charge made by the ſurveyor of the windows, the following caſe is ſtated at the ſurveyor's requeſt, purſuant to the act of parliament in that caſe made and provided.

The appellant is by the aſſeſſors of the pariſh aſſeſſed for *fourteen windows*, and by the ſurveyor is charged for *ſixteen windows*; the appellant having laid *four windows* into *two*, as appears by the plan hereunder.

One entire Frame.

One entire Frame.



To this charge of the ſurveyor, the appellant hath appealed to the commiſſioners, ſuggeſting, he ought not to be charged more than *fourteen windows*. And the commiſſioners have determined, that the appellant is not liable to be charged more than *fourteen windows*, and have taken off the charge of the ſurveyor: with which determination the ſurveyor is diſſatisfied, apprehending the ſame to be contrary to the true intent and meaning of the ſtatute in that caſe made and provided.

We therefore, the major part of the commiſſioners, preſent at the ſaid appeal, at the requeſt of the ſurveyor, have ſtated and ſigned this caſe, and humbly ſubmit to your lordſhips opinion, Whether the ſame ought to be charged or not.

T. T. Mayor.
J. N.
J. T.

March 2, 1759.

Opinion. We are of opinion, That the determination of the commiſſioners is wrong,

Mansfield,
J. Willes.
T. Parker,
T. Deniſon,
M. Foſter.
E. Clive.
S. S. Smythe,
R. Adams.
H. Bathurſt,
E. Wilmot.
W. Noel,

Serjeants Inn, June 19, 1759.

A Tithe

A TITHE CASE.

THE Rev. Mr. *C.* about *twenty-one years* ago laſt *Lady-day*, ſet and ſet the rectory of *Middle-Chinnock* to *T. W.* at the yearly of 82*l.* *per annum*. A brief memorandum of which was drawn on a ſcrap of paper, and ſigned by each of them; in which it was ulated, that the ſaid *W.* ſhould pay Mr. *C.* 10*l.* at *Midſummer*, . at *Michaelmas*, 6*l.* at *Chriſtmas*, and 6*l.* more at *Lady-day*. ome time after, *W.* perceiving what a fooliſh contract he had made, uainted his landlord, that he could not, nor ever would, pay the t after that unequal manner. To which Mr. *C.* replied, *then pay you can.* *W.* accordingly always paid his *Michaelmas* rent at iſtmas, and his *Lady-day*'s at *Midſummer*.

Query, Now, as Mr. *C. died* on the 3d of *September* laſt, I ſhould be glad to know, What proportion of rent his executrix can *legally*, or *equitably* claim from the ſaid *T. W.* Can ſhe claim agreeable to the proportion of *tithes*, that were ſevered from the ground, to the day of her huſband's death? or only (as a tenant for life) a proportionable ſhare of the *Michaelmas* rent? or is the original contract binding, and the rent to be paid agreeable thereto?

pinion. I am of opinion, That this caſe is not within the act of 11 *Geo.* 2. *cap.* 19. and that Mr. *C.* had more reaſon to complain of the periods of time for payment of the rent than Mr. *W.* had. If it can be made appear to the ſatisfaction of a court of equity, that the times and ſums in the written agreement were varied by the conſent of both parties, to equal quarterly payments, I think, as Mr. *C.*'s executrix will loſe the rent between *Midſummer* and *Michaelmas*, it then will only be after the rate of 20*l.* a quarter; but if the written agreement remains in full force, ſhe appears to me to be without remedy for the part of the 60*l.* between *Midſummer* and *Michaelmas*, and muſt refer it to the tenant's conſcience.

ebruary 7, 1766. *W. Sayer.*

CASE.

e 9, *J. P.* by his will deviſes to a youngeſt ſon in theſe words, 62. *viz.*

" *Item*, I give to my ſon *T. P.* all that part of the eſtate which I " bought of my brother-in-law *W. P.* and likewiſe a ground, " called by the name of *Golden Lays*, which I bought of one " *J. G.* And likewiſe I give my ſon *T.* two acres of land lying " in a field called *Penyland*, bought of *J. N.* And alſo I " give my ſon *T.* the houſe and orchard, and three lands

" ſhuting

" ſhuting into the orchard, being lands which I bought of " *N. S.*"

The teſtator alſo deviſes to his eldeſt ſon as follows:

" *Item*, I give to my ſon *J. P.* all the reſt part of the eſtate at " *Greet*, as I got by law, as the award will plainly ſet " forth."

Note, All the premiſes are freehold.

Query, What eſtate and intereſt does *T.* the youngeſt ſon, and *J. P.* the eldeſt ſon and heir, reſpectively take under the above deviſes, or otherwiſe?

Opinion. I am of opinion, That the above will is not duly atteſted, ſo as to paſs freehold eſtates; and that the eldeſt ſon *J.* takes the whole freehold, as the eldeſt ſon and heir of his father.

Inner-Temple, June 26, 1767. *Thomas Warren.*

Mr. Collet's *opinion on the foregoing caſe.*

By the above-mentioned deviſe to *T.* the youngeſt ſon, if there were not other words in the will to ſhew the intention of the teſtator, I think he would only be intitled to an eſtate for life, in the premiſes deviſed to him; but as by the will (the probate of which is laid before me, with the above caſe) four ſeveral legacies, of 100*l.* each, are equally charged on the eſtates deviſed to *T.* and *J.* to be paid within a year after the teſtator's death, or when the legatees ſhould attain the age of *twenty-two years*, it appears clearly to be the teſtator's intention to give to each of his ſons an eſtate in fee in the premiſes deviſed to him; and it hath been often determined, that where lands are deviſed to a perſon charged with the payment of a ſum of money in groſs, to be paid at all events at a certain time, which is the above caſe, a fee is deviſed, without any other words to paſs the inheritance; and more eſpecially when the profits of the lands would not by the time the legacies thereon charged are payable, amount to ſufficient to diſcharge them; for without the fee was in ſuch caſe to paſs, it might happen that the deviſee, inſtead of gaining by the deviſe, might be a loſer, and not reap any benefit, which could never be the teſtator's intention; and wherever the intent of the teſtator can be apparently collected from the will, it will ſupply the want of thoſe words which are neceſſary in deeds to convey an inheritance.

Tewkeſbury, Dec. 1, 1767. *H. Collet.*

Mr.

Mr. Madocks's opinion on the foregoing caſe.

Upon reading a copy of the will at large, I am of opinion that both *T.* and *J.* take an eſtate in fee-ſimple, in the ſeveral eſtates deviſed to them reſpectively by the will. The words at the cloſe of the will, *viz.* [Each perſon paying his equal ſhare of all legacies and debts, *&c.*] are deciſive of the doubt in the former part of the will, and clearly give each of them an eſtate in fee-ſimple.

Lincoln's-Inn, Dec. 22, 1767. *John Madocks.*

C A S E.

A. B. who died inteſtate, ſuffered a recovery of his whole eſtate in 1708, and by a marriage ſettlement, dated 1714, excepts out of the ſaid ſettlement, ALL that the lordſhip or manor of *C.* in the county of *D.* with all the rights and appurtenances thereof; together with the free-warren; *And alſo* a moiety of the ſaid hundred of *C.* in the ſaid county of *D.* with the appurtenances; *And alſo* the free-chappel or chauntry of *E.* *And alſo* except ALL thoſe two meſſuages or tenements in *F.* and *G.* in the ſaid ſettlement mentioned; *And alſo* two other meſſuages or tenements in *H.* and *I.* in the ſaid ſettlement mentioned, or one of them, one whereof is called St. *M.* and now or late in the occupation of *L.* and the other now or late in the occupation of *M.*

Query, Whether by the words of the laſt mentioned exceptions, any land can or do paſs with the ſaid four meſſuages or tenements, though the tenants do hold lands with them?

Opinion. I think the lands uſually held with the meſſuages, are part of the tenements excepted.

May 30, 1747. *Dudley Ryder.*

C A S E.

J. W. a mariner belonging to his Majeſty's ſhip *Princeſs Royal*, died inteſtate on board the ſaid ſhip in his Majeſty's ſervice, leaving a wife, *M. W.*

The widow took out letters of adminiſtration to her ſaid huſband from *Doctors Commons.*

The widow, by letter of attorney, employed *J. L.* to receive from the treaſurer, or pay-maſter of his Majeſty's navy, or the commiſſioners or pay-maſters of the wages and prize-money at the *Navy-Of-*

fice or elſewhere, and all others whom it did or might concern, ALL wages and prize-money due to her as adminiſtratrix as aforeſaid.

The ſaid Mr. *L.* ſent up to Mr. *L.* the letters of adminiſtration, in order to ſearch at the *Navy-Office*, to ſee what was due to the deceaſed, Mr. *L.* ſent his clerk, (Mr. *R.* ſince deceaſed) to the *Navy-Office*; where he was told the ſhip's books were at *Chatham*, Mr. *R.* was directed to one *F.* belonging to the office at *Chatham*, and he ſent down to *F.* the letters of adminiſtration, in order to ſearch and find out what was due; and he *F.* did ſearch, and there appeared by the books to be due 31 *l.* 8 *s.* 10 *d.*

One *J. C.* (as informed from the office at *Chatham*) conductor to the office at *Chatham*, (to whom *F.* directed the letters of adminiſtration) received from the clerk in perſon belonging to the *Navy-Office*, whoſe buſineſs is to pay the wages and prize-money, the ſaid 31 *l.* 8 *s.* 10 *d.* without any letter of attorney, or any thing from the widow the adminiſtratrix; and the ſaid *C.* pretends, that he paid the 31 *l.* 8 *s.* 10 *d.* to one *S.* in *London*, and delivered him the letters of adminiſtration, and *S.* pretends he paid *F.* all the money ſave 10 *d.* which 10 *d.* *And alſo* the letters of adminiſtration, *S.* now has in his hands, as he acknowledges. *F.* is abſconded, and cannot be found; *S.* is willing to pay the 10 *d.* and deliver up the letters of adminiſtration.

Query, If the widow and adminiſtratrix cannot maintain an action for the ſaid 31 *l.* 8 *s.* for money had and received to her uſe againſt the treaſurer, or commiſſioners of the navy, or the officer belonging to the office at *Chatham*, (as they have the letters of adminiſtration as aforeſaid) and paid the 31 *l.* 8 *s.* to *F.* as aforeſaid, or what other remedy, and againſt whom, has this poor woman for the ſaid 31 *l.* 8 *s.*?

Opinion. The widow having once given a letter of attorney to Mr. *L.* truſted him to do what he would with it, and therefore, though Mr. *C.* had no particular warrant or power from the widow, to him expreſsly, yet he acted under the letter of attorney made to *L.* which was a ſufficient authority for *C.* to receive, and for the pay-maſter to pay, and therefore no action can lie againſt the pay-maſter or any of his clerks; and if Mr. *C.* can diſcharge himſelf, by proving payment to *F.* then *C.* is well diſcharged, and the widow's remedy is againſt *F.* and if *F.* is inſolvent, ſhe muſt make the beſt end ſhe can with him.

Inner-Temple, Nov. 20, 1765. *Thomas Warren.*

CASE.

CASE.

BY indenture between *W. G.* and *E.* his wife, of the one part, *J. T.* and *G. W.* of the other part, *reciting*, That the eſtate and effects the ſaid *E. G.* was poſſeſſed of at the time of her marriage with the ſaid *W. G.* which was then lately ſolemnized, were eſtimated at the ſum of 200 *l.* after payment and ſatisfaction of her debts; and that the ſaid *W. G.* previous to the ſaid marriage, conſented and agreed to ſettle the ſaid 200 *l.* *on the truſts* hereafter mentioned; but being then incapable of advancing the ſame, did by his bond of equal date therewith, engage for the payment thereof to the ſaid *T.* and *W.* on the 4th of *Sept.* then next with intereſt at 4 *l.* *per cent.* On which ſecurity *T.* and *W.* by the direction of *E. G.* were to permit *W. G.* to continue it during her life. *It is therein witneſſed, declared, and agreed*, That the ſaid 200 *l.* ſhould remain, continue, and be, to and upon the following truſts, (that is to ſay) *In truſt* for all and every the three children of ſaid *E. G.* by *J. B.* her former huſband, namely, *A. B.* *E. B.* and *S. B.* in equal ſhares as *tenants in common*, at ſuch time or times as ſaid *E. G.* notwithſtanding her coverture, ſhould by deed or inſtrument in writing, duly executed and atteſted, direct or appoint; And in default of ſuch appointment, at the death of ſaid *E. G.* *In truſt* for all and every of them the ſaid *A. B.* *E. B.* and *S. B.* in equal ſhares as *tenants in common*, to be divided between them at the death of the ſaid *E. G.* *And it was thereby declared and agreed* by and between all the ſaid parties thereto, that until ſuch appointment ſhould be made, or until the deceaſe of ſaid *E. G.* it ſhould and might be lawful for ſaid *T.* and *W.* or the ſurvivor, his executors, adminiſtrators, and aſſigns, to put, place, and continue at intereſt the ſaid 200 *l.* on good, real, and perſonal ſecurities, (but with the conſent and approbation of ſaid *E. G.*) the intereſt and produce whereof ſhould from time to time be paid to, and received by ſuch perſon and perſons, and for ſuch uſes and purpoſes, and in ſuch parts and proportions, manner, and form as aforeſaid, *E. G.* ſhould from time to time, and at any time or times during her life, notwithſtanding her coverture, and whether ſhe ſhould be covert or ſole, by writing or writings under her hand direct or appoint, *To the intent* that the ſame, or any part thereof might not be at the diſpoſal, or ſubject or liable to the controul or intermeddling of ſaid *W. G.* but only at her own ſole and ſeparate diſpoſal; and in default, and until ſuch direction and appointment, *To the proper hands* of the ſaid *E. G.* or otherwiſe ſhould permit and ſuffer her to receive and take the ſame to and for her own ſole and ſeparate uſe and benefit, whoſe receipt, under her hand, ſhould from time to time, notwithſtanding her coverture, be a ſufficient diſcharge to the perſon or perſons who ſhould ſo pay the ſame, for ſo much thereof for which ſuch receipt ſhould be taken.

N. B. This deed was executed by all the parties, and properly atteſted.

By indenture between ſaid *W. G.* and *E.* his wife, of the one part, and ſaid *J. T.* and *G. W.* of the other part, *reciting* the laſt deed, and that the ſaid *J. B.* died inteſtate, and that ſaid *A. B. E. B.* and *S. B.* became intitled to two-thirds of his perſonal eſtate, amounting to upwards of 200*l.* *And alſo*, That it was agreed that the ſaid 200*l.* ſecured by ſaid *W. G.* on his bond, was intended, and ſhould go and be accepted for ſaid *A. B. E. B.* and *S. B.* in part of their diſtributive ſhares of their ſaid father's effects; *And alſo*, That the money, ſecurities for money, goods, chattels, and effects mentioned and contained in a ſchedule therein referred to, were accepted by ſaid *T.* and *W.* at the ſum of 206*l.* 15*s.* 11*d.* in full diſcharge of the ſaid 200*l.* due from the ſaid *W. G.* on the ſaid bond, and as far as they lawfully might in ſatisfaction of the diſtributive ſhares of the ſaid *A. B. E. B.* and *S. B.* of their father's effects, it appearing to be ſufficient for that purpoſe. *It is witneſſed*, That in purſuance of the ſaid agreement, and for the purpoſes aforeſaid, the ſaid *E. G.* by virtue of and under the power and authority in and by the ſaid therein recited indenture, and all and every other power and authority in her then veſted or repoſed, *did* direct and appoint the ſaid 200*l.* ſhould from the date thereof remain, continue, and be *In truſt* for the ſaid *A. B. E. B.* and *S. B.* in equal ſhares as *tenants in common*: *And it is therein further witneſſed*, That for the payment of ſaid 200*l.* and in ſatisfaction of the remainder of the diſtributive ſhares of ſaid *A. B. E. B.* and *S. B.* in their ſaid father's effects; *And alſo* in conſideration of 5*s.* paid by ſaid *T.* and *W.* to ſaid *W. G.* *Did* grant, bargain, ſell, aſſign, and deliver, to ſaid *T.* and *W.* ALL and ſingular the monies, ſecurities for money, goods, chattels, and effects, mentioned and contained in the ſchedule thereto annexed and above referred to, and every part or parcel thereof, with the appurtenances, *To hold* to the ſaid *T.* and *W.* their executors, adminiſtrators, and aſſigns for ever, but *In truſt* to keep and preſerve, or manage and diſpoſe thereof as they ſhould ſee proper, for the uſe, benefit, and advantage of ſaid *A. B. E. B.* and *S. B.* their executors, adminiſtrators, and aſſigns.

The ſaid *E. G.* during her widowhood, took out letters of adminiſtration in the proper *Eccleſiaſtical court* for the dioceſe, for the effects of the ſaid *J. B.* her former huſband.

The children are all upwards of *ten years* old.

Query, If the mother has an appointment in the *Eccleſiaſtical court* of the dioceſe, of the guardianſhip of her ſaid children, may the truſtees be well ſatisfied in delivering over the monies and goods to her, and what diſcharge ſhould they have?

Opinion, I am of opinion, That if the mother ſhould be appointed guardian of her children in the *Eccleſiaſtical court*, the truſtees will not be juſtified in delivering over the monies and goods to

to her, but that they must preserve and keep the same for the benefit of the children, *on the trusts* reposed in them, and that the mother can give them no sufficient discharge.

bruary 12, 1768. *R. Perryn.*

C A S E.

BOUT *Jan.* 1767, Mr. *J. B.* agreed to demise to *W. F.* a messuage and lands at *Danbury* in *Essex*, for *ten years* with an in in the lessee for *ten years* further; the lessor was to lay out 45 *l.* ie house and buildings, (they are Mr. *F.*'s own words in a written osal) and the lessor was to keep the messuage in repair, *except* windows. The lessor was to take several things on the pre- at an appraisement, and a lease was to be prepared.

. lease between *B.* of the one part, and *F.* of the other part, *B.* sed a mansion house, with the cellars, wine vaults, out-buildings, , stables, coach-house, cow-house, grainary, yards, ways, wa- *&c.* And six fields containing, *twenty-eight acres*, (ALL trees *ed*, with liberty of ingress, *&c.* for *B.*) *To hold* from *Lady-day n years* with an agreement for a further term of *ten years*, at the n of the lessee, at the yearly rent of 45 *l.* payable quarterly, with *visoe* for re-entry on non-payment of rent or breach of the co- nts. Amongst other covenants the lessor was to keep all the pre- , with the gates, stiles, *&c.* in repair, glazing *excepted.*

ien there is an agreement in the following words:

And it is agreed by both parties, that the said *J. B.* his heirs assigns, shall and will, within *six months* from the date hereof, y, or cause to be paid, into the hands of the said *W. F.* his exe- tors, administrators, or assigns, the sum of 45 *l.* which said sum 45 *l.* the said *W. F.* his executors, administrators, or assigns, ll and will lay out and expend *on* the *mansion-house*, *ch-house*, *cow-house*, barn, and grainary, for the laying the same t, the said *W. F.* his executors, administrators, or assigns, shall oduce receipts for the same being so laid out on the said pre- ses, and not elsewhere, whenever demanded by the said *J. B.* heirs or assigns."

iere is not any covenant for a surrender of the premises at the f the term.

e said 45 *l.* has been laid out by the lessee, amongst other things *ing away* a timber built *porch* to the kitchen, with a door, *two ps*, *one larger*, *a bog-house*, *the joists and floor of a hay-loft* over the , and *a dormer window in the roof*, in turning the stable into a coach

houſe, in *removing a building near the kitchen door*, and *by turning the coach houſe into a ſtable.*

On an offer to ſettle the account of the ſtock taken by Mr. *F.* at an appraiſement, amounting to 83*l.* 16*s.* 3*d.* Mr. *F.* produced bills to the amount of upwards of 45*l.* the greater part of which, aroſe from the before mentioned alterations. Mr. *B.* has *objected* to allowing the ſum, alledging, that 45*l.* *ought to have been laid out in repairs*, and *not in alterations* On the other hand, Mr. *F.* inſiſts, that he has a right to lay out 45*l.* in what he will, and that it was ſo agreed originally, and the account is ſtill unſettled. The only evidence of the original agreement, is the attorney who prepared the leaſe, *who at one time has ſaid one thing*, and at *another time another thing.*

Query, As the leaſe contains a demiſe of a *ſtable and cow-houſe* particularly, has Mr. *F.* a right to transform them into other buildings, or to alter and remove, any other part of the demiſed premiſes; and will Mr. *F.* be intitled to an allowance of more of the 45*l.* than has been laid out in actual repairs; and if the leaſe will not warrant the alterations, and ſupport Mr. *F.*'s demand on that account, will Mr. *F.* be at liberty to give evidence, by way of explaining the agreement in the leaſe?

Opinion. As there is ſome little ambiguity in the words of the covenant, (the covenant being that the 45*l.* ſhall be laid out *on* the manſion houſe, *&c.* and not *in the repair* of the the manſion houſe, *&c.*) the intention of the parties may be explained by *parol* evidence. And as Mr. *F.* took the place for his own habitation, as a gentleman, and not *as a farmer*, I think the alteration made by him, of converting the *cow-houſe*, (which could be of no uſe to him as a *cow houſe*), into a *ſtable*, *&c.* could not be looked on as very unreaſonable, eſpecially as he had ſo long a term as *ten years*, with an option of *ten years* more. Therefore on the whole, I ſhould not think it worth Mr. *B.*'s while, to riſque a law ſuit on this account, eſpecially as it is ſtated, that the attorney who prepared the leaſe, varies a little in his account of the original agreement.

Lincoln's-Inn, May 12 1768. *W. H Aſhhurſt.*

CASE.

C A S E.

Auguſt 29, 1758. IN the Will of *A. D.* of this date, duly executed and atteſted, is the following deviſe.

" I give and beqeath *unto my nephew W. D.* all that my freehold " eſtate that I bought of *W. K.* ſituate at *Alhampton* in the " county of *Somerſet*, *To hold* to him *during his natural life*, " *and after his deceaſe*, to and amongſt *his iſſue*; and *in default* " *of iſſue*, to be divided between *my nephew E. D. and my niece* " *M. D.* and to *their heirs* and aſſigns, for ever."

The teſtator alſo gave to the ſaid *M. D. four* cloſes of ground, under the like limitation, to her iſſue, with remainder to the ſaid *E. D.* in fee.

And likewiſe gave, to the ſaid *E. D.* two cloſes of ground, under the like limitation, to his iſſue, with remainder to the ſaid *M. D.* in fee.

The ſaid *W. E.* and *M. D.* are brothers and ſiſters. *W. D.* ſuffered a recovery, before he had iſſue, but now has iſſue one daughter.

Query, If *W. D.* had an eſtate tail, or what eſtate under this will? and could he, by the recovery, bar the remainders, or what effect will it have?

Opinion. I am of opinion, That *W. D.* took an eſtate tail by the will; and that by his ſuffering a recovery, he hath effectually docked the intail, and barred the remainders over, of the premiſſes deviſed to him.

May 19, 1768. *W. Rivet.*

Mr. Yorke's *opinion on the foregoing caſe.*

Opinion. The whole ſtreſs of this caſe turns upon the word *amongſt*. If the deviſe had been to *W. D.* for life; and from and after his deceaſe, to his iſſue, *&c.* I ſhould have thought clearly, that *W. D.* would have been tenant in tail, and maſter of the eſtate; eſpecially having no children at the date of the will, or death of the teſtator. But, as it is penned, it may be argued, that the limitations operates by way of contingent remainder to the *iſſue*, who will take the lands, by way of iſſuing *jointenancy* for life. And this opinion receives conſiderable ſtrength from the reaſonings in *Wild's* caſe, 6 *Cok.*—

and

and from the argument of Lord *Cowper*, in the caſe of *Coote* v. *Coote*, 2 *Vern.* 546. However, the judges of the common law, have gone ſo far of late years to ſupport the general intention of a teſtator, in favour of the poſterity of a tenant for life, who is marked out by deviſe, as the ſtem or *root*, of a particular ſucceſſion, that it is not improbable, in the preſent caſe, they may hold *W. D.* to be tenant in tail, and conſtrue the word *amongſt*, to carry the land, not to the *iſſue*, to be enjoyed by them as ſuch, as *joint-tenants*, but *ſucceſſively*, in ſuch courſe as the law preſcribes *heirs of the body*, to take. I like this conſtruction beſt, and incline to it; yet think the caſe not free from doubt; and wiſh, that the *recovery* had not been ſuffered, till the point had been cleared up, (as it is ſomething new), by the judgment of a court of law, upon a caſe made, or on a *ſpecial* verdict in *ejectment*.

May 26, 1768. *C. Yorke.*

CASE.

H. P. late of *Finhead* batchelor, occupied an eſtate of *ſix* or *ſeven* hundred pounds a year, ſome arable and ſome paſture, and lived with his brother *J. P.* his wife, five ſons, and one daughter; the ſaid *H.* was the maſter of the whole, and ſuffered his brother's wife *M.* to be ſole miſtreſs of the dairy, and to make and ſell the cheeſe and butter, and take charge of the houſehold affairs; ſhe, ſometimes on his purchaſing an eſtate, would bring him 500 *l.* which was more than he expended, and ſhe was well known to be a careful miſtreſs of the family. The ſaid *H.* after having made and executed his will, and gave legacies to his nephews and neices, made his brother *J.* executor and reſiduary legatee, and died *January* 6, 1766; *J.* proved his brothers will, and made his own will, and gave his wife *M.* only 1 *s.* and died *Auguſt* 18, 1766, leaving his wife and family in the farms and buſineſs, and making his ſons (except *H.* the eldeſt), joint executors.

In *September* 1766, *M.* the Widow, put 300 *l.* into the funds, and died within a year, inteſtate; her eldeſt ſon *H.* obtaining letters of adminiſtration out of *Doctors Commons*, and is thereby intituled to receive the money. Now his four brothers, who are joint executors of their father's will, think that the 300 *l.* were aſſets and part of their father's eſtate; and that they, (excluſive of *H.* who adminiſtred to his mother's eſtate), ought to have the 300 *l.* equally amongſt them; *H.* on the other hand inſiſts, that by the ſtatute of diſtribution, he ought to claim a diſtributive ſhare of the 300 *l.* equal with his brothers and ſiſter, as of the eſtate of his mother, who on her death had ſaid, ſhe had the 300 *l.* by her ſome years, that her huſband cut her off with *a ſhilling*, and that the money ſhe had made a reſerve of, *ſhould go equally* amongſt all her children. This is told by one

woman,

woman, but was never committed to writing. The parties are willing to abide by counſel's opinion.

Query, Whether the 300 *l.* ſhall be deemed the property of *M.* the mother, or her four ſons, who were joint executors of the father, excluſive of *H.*?

Opinion. I am of opinion, That this ſum of 300 *l.* being in the mother's poſſeſſion and applied by her as her own, muſt be deemed to be her property, unleſs it can be proved to belong to her huſband, at the time of his death; the burthen of which proof will lie on his executors, and there does not ſeem to be any evidence amounting to ſuch a proof.

Serjeants-Inn, May 18, 1768. *J. Burland.*

C A S E.

ON *Saturday* the 23d day of *May* 1767, four ewes and five lambs were brought to the *Northchurch pound*, by *R. P.* which had been ſtraying in the pariſh of *Northchurch*, *two days*, and *B. the pound keeper, had them* cryed on *Monday* the 25th day of *May*, in *Berkhampſted St. Peter*, being market day, and took them out of the pound into his orchard, in the ſaid pariſh of *Northchurch*, and they lay there till *Wedneſday* in the morning, when *J. C.* came to *B.* and told him they were his maſter *D.*'s then *B.* told him, he might have them, if he would pay the charges; and told him the charges were, *taking up* 1 *s. keeping* 1 *s. withering* 4 *d. crying* 4 *d.* and *pounding* 2 *d.* if he would take them away then, elſe there would be more charges for keeping them; then he went away, but returned with another man at *eight* at night, being upwards of *twelve hours* from his firſt coming, when he aſked *B.* if he would let him have them, which *B.* told him he might, if he would pay the money, which was then but 2 *s.* 10 *d. C.* then pulled out his money, and threw *down* 1 *s. in one place*, 1 *s.* in another, and 1 *s.* in the third place, and told him to take what he would; *B.* then told him, he would not ſtoop to him, or his maſter, but if he would give him the money into his hand, he would take it, but *C.* refuſed, and made many words; *B.* told him, if the ſheep were not taken away that night, he would be paid 6 *d.* more for keeping, and that he would carry them the next morning *to the Duke of Bridgewater's at Aſheridge*, *C.* after ſome time, took up his money and went away, and never returned again, and the ſheep are now in *Aſheridge* park, belonging to his grace the duke of *Bridgewater*, leſſee under the crown of the manor of the *Halimote* of *Northchurch*, parcel of the honor of *Berkhampſted*, and of the dutchy of *Cornwall*, *And alſo* ſteward and bailiff of the ſame manor, and by the ſaid leaſe, intitled to one half of the value of all waifs and ſtrays, ariſing from the ſaid manor, and the crown to the other half.—Part of

of *Asheridge* park lies not *three miles* from *Northchurch* pound.—Afterwards *D.* ſerved *B.* with a copy of a *capias*, but has not declared.

On the 4th of *Auguſt* 1767, and not before, *D.* applied to the ſheriff of *Hertford*, for a *replevin* warrant, which was granted him, and directed to the conſtables of *Northchurch* and *W. P.* one of the ſheriffs bailiffs or officers, but the ſheep being out of the pariſh of *Northchurch*, *D.* has applied to the ſheriff for a return that they are *eloigned*, which at preſent the ſheriff has refuſed, being told where the ſheep, *&c.* now are.

It is apprehended, *D.* will apply to get a *writ of withernam*, or elſe will enter his grace's park, which lies in two counties and three pariſhes, but not in the pariſh of *Northchurch*, ſo that when they come to take the ſheep, it may poſſibly be, that they may be in a different county.

Since the ſheep has been in *Aſheridge* park, one of the lambs is ſtolen or ſtrayed, ſo as not to be found, and one of the ſheep is dead of the rot.

N. B. Since the lamb was ſtolen, the other ſheep and lambs have been appraiſed by proper judges, and a value ſet on them.

Query 1ſt. Is the tender by *C.* a good tender; and can *B.* as pound-keeper, under a written appointment, juſtify the detaining of the ſheep and lambs? If he can, muſt he juſtify, as ſervant to the crown, or to the duke of *Bridgewater*?

Opinion. The tender ſeems to me to be ſufficient in the manner of it, and it was a very blameable obſtinacy in *B.* in not taking the money, when he might by ſtooping have had it; the tender appears too to be ſufficient in quantity, for *B.* could not, as I apprehend, demand any thing more than for the keeping and calling, though I doubt his right to the latter; and am of opinion, he could not demand any thing for taking up the eſtray or withering it; and that he cannot juſtify the detention after the tender.

Query 2d. As the lamb that was loſt, was kept in *Aſheridge* park, which is paled round, where the reſt that are living now are; will *B.* or the duke of *Bridgewater*, or either of them, be anſwerable for the loſs of it, or for the other which is dead?

Opinion. I think he will be liable to anſwer for the lamb loſt, and the ſheep dead, becauſe his denial to reſtore them was a converſion, and the value muſt be fixed at that time.

Mid. Temple, 18th *December* 1767. *J. Wallace.*

CASE.

C A S E.

Nov. 24, 1737. *W. C.* by his laſt will (reciting that his younger ſon *G. C.* had been abroad beyond the ſeas for near *two years* paſt, and was ſuppoſed and reported to have died abroad or upon the ſeas; but in caſe he ſhould be alive and ſhould return to *England*, he thought it convenient to make ſome proviſion for him), and therefore gives and bequeaths to his ſaid ſon *G. ſix* meſſuages in ——— *ſtreet, Weſtminſter, To hold* to him, his executors, *&c.* for ſuch eſtates and terms as he had therein; but in caſe of the death of his ſaid ſon *G.* and not otherwiſe, he gives and diſpoſes of *three* of the ſaid meſſuages to his ſaid ſon *W. To hold* to him, his executors, *&c.* for ſuch eſtates and terms as he had therein; And his will and mind is, that his ſaid ſon *W.* his executors, *&c.* ſhould be in poſſeſſion of the ſaid *three* houſes, and receive the rents to his own uſe, till the return of his ſaid ſon *G.* without being accountable to him for the ſame.

April 4, 1748, *W. C.* the ſon by his laſt will, gives, deviſes and bequeaths, to the governors of the infirmary in the liberty of *Weſtminſter*, the ſaid *three* meſſuages for the uſe and benefit of the ſaid infirmary, *ſubject* to ſuch eſtates in the leaſehold premiſes, as by the will of his late father, his brother *G.* (who at the time of making the ſaid will, had been gone abroad for near *two years*, and was ſuppoſed to have died abroad or upon the ſeas, and had not ſince been heard of), might claim therein; and directs his executrix, as ſoon as conveniently might be, after his deceaſe, to aſſign the ſaid *three* leaſehold meſſuages, and the leaſe or leaſes by which the ſame were held, unto the governors of the infirmary and their ſucceſſors, or to ſuch perſons as the governors for the time being ſhould appoint for that purpoſe, their executors, *&c.* for ſo many years of the term or terms, as ſhould be then to come in the ſaid leaſehold meſſuages, upon the truſts and for the uſes aforeſaid, *ſubject* to ſuch claim, and to the claim of his brother *G.* therein as aforeſaid.

Query, Whether the bequeſt of the ſaid houſes by the laſt mentioned will, is within the meaning of any of the ſtatutes of *Mortmain*.

Opinion. I think that the bequeſt of theſe leaſes to the governors of the infirmary, is void by the late act of parliament, to prevent the alienation of lands to charitable uſes; for it has lately been determined by the *Lord Chancellor*, on mature conſideration, that the diſpoſition of leaſes of houſes or lands, was not only within the meaning but even within the words of the act, which prohibits the ſettling any intereſt out of lands, and leaſes for years are ſuch. And many of the incon-

veniences which were intended to be prevented, would not be avoided, if deviſes of long terms of years were allowed to be given to charitable uſes; for property of this kind could not circulate, and would be locked up for ages, and the ſtatute would be in a great meaſure eluded.

Lincoln's-Inn, February 20, 1753. *R. Wilbraham.*

C A S E.

H. is an hamlet within the pariſh of *F.* in the county of *Middleſex.*

In 1631 the inhabitants of *H.* at their own expence and for their own convenience erected a *chapel* within the hamlet; but before it was conſecrated or opened, an agreement was entered into by the then vicar of *F.* of the one part, and ſeveral of the inhabitants of *H.* of the other part, touching the rights of the mother church. This agreement is regiſtred in the biſhop of *London*'s regiſtry, with the act of conſecration, and without which the biſhop could not have conſecrated the chapel.

The church of *F.* is a very ancient building, and now wants a very large and thorough repair, and the buildings in and about *F.* and with them the inhabitants, having of late years greatly increaſed, the church really ſtands in need of an enlargement, ſo that the inhabitants may be decently accommodated.

On the 30th of *July* 1766, at a veſtry held for *F.* purſuant to due notice publiſhed in the church on the *Sunday* preceding, it was the unanimous opinion of the inhabitants preſent, that the pews, and other parts of the church, were in want of conſiderable repair, and that there was not a ſufficient number of ſeats to accomodate the pariſhioners, therefore that the church-warden ſhould appoint a proper ſurveyor to prepare a plan and eſtimate, and he ſhould give notice to the churchwarden of *H.* ſide, to employ a ſurveyor on behalf of *H.* diviſion, to attend with the ſurveyor on the *F.* ſide, to examine and report their opinions concerning the repairs and increaſe of ſeats.

G. D. jun. was appointed ſurveyor, and notice of the reſolution of this veſtry was communicated to the churchwarden of *H.*

On the 30th of *Auguſt* 1766, at a veſtry held for *H.* *It was ordered*, that the churchwardens and others ſhould be deſired to attend the churchwardens of *F.* and inquire what repairs were propoſed; And it was reſolved that Mr. *W.* ſhould be appointed ſurveyor on the *H.* ſide. to meet the *F.* ſide ſurveyor any day that ſhould be convenient to both.

The

The ſurveyors met, and a ſurvey and eſtimate being made, another veſtry was held for *F.* on the 1ſt of *November* 1766, purſuant to due notice, to take into conſideration the report of the ſurveyors, reſpecting the neceſſary repairs and enlargement of the church. At this meeting a paper, intitled, "An eſtimate of the expence of the repairs which are abſolutely neceſſary to be done in *F.* church, ſigned by the three ſurveyors, and amounting to 1327 *l.*" was read.

It was thereupon reſolved, as the opinion of the inhabitants whoſe names were thereunto ſubſcribed, being the major part of the inhabitants at that meeting aſſembled, that the ſeveral particulars of repairs, alterations and erections therein after mentioned, were neceſſary for the making the ſaid church, as well more decent, as more convenient, for the inhabitants of the ſaid pariſh. By this reſolution ſome of the particulars pointed out by the ſurveyors were rejected, and others altered, and the expence upon the whole greatly reduced.

Query, Are the inhabitants of *H.* liable to enlargement, rebuilding if neceſſary, and ornaments, as well as repairs; more particularly are they liable to any, and which of the articles in the reſolution of the 1ſt of *November* laſt?

Are they not bound by the reſolution formed upon the eſtimate of their own ſurveyor?

Should they by dint of numbers out vote the inhabitants of *F.* on any point really neceſſary, how muſt *F.* proceed to get their church repaired?

Opinion. The inhabitants of the hamlet of *H.* have by agreement in 1631 made themſelves *liable to the reparation of the church of F. from time to time as they heretofore have been*, on account of being allowed to erect a chapel for their eaſe and convenience; and if they had not ſo bound themſelves, they would have been obliged by law to contribute to all neceſſary repairs, for this general reaſon; becauſe it would be unjuſt, that an eaſement granted to one part of a pariſh, by allowing them to have a chapel appropriated to themſelves, ſhould in any way become a burthen to the other part of the pariſh, without whoſe conſent it is to be preſumed the permiſſion for erecting a chapel would not have been originally obtained. And I apprehend that the reparation to which the inhabitants of an hamlet, having a chapel, are bound, extends not only to the fabric and to every thing neceſſary to the preſervation of that fabric, but alſo to the repair or renewal of decayed pews, antient ornaments, ſurplices, *bibles*, books of prayer, linen, *&c.* which may be properly required, for the decent performance of divine ſervice; and ſuch reparation, *if wanted*, the *Ordinary* either on *view* or *complaint*, or both, may compel the

churchwardens to make by his own authority, even if the majority of a parish, in vestry assembled, should be of a contrary opinion. But a rebuilding or an enlargement of a church or the erection of additional pews, I apprehend can only be effected by a vote of the majority of the parishioners, assembled on proper notice in a legal vestry; and I am inclined to think, that the inhabitants of a chapelry can no more be excluded from the vestry of the mother church, than from the church itself, if they chuse to attend it; and I farther apprehend, that whenever any business is to be transacted in which the chapelry-inhabitants have an interest, the chapelwardens ought to have timely notice of the vestry-meeting given them by the churchwardens, that the inhabitants of the chapelry may attend, if they think it necessary so to do: And, if they should attend, and out vote the inhabitants of the district of the mother-church, I am inclined to think, that the minority could have no remedy in respect to rebuilding, an extension of walls, or the erection of new pews upon new sites; but the *Ordinary*, as I observed before, of his own authority, may order churchwardens to do all things, which he finds necessary for the support of the ancient fabric, and for the purpose of performing divine service, and he has also power to enforce his orders upon churchwardens, and to oblige them to make a rate to raise a sum adequate to the repair wanted, upon all the parishioners; who may be compelled by *ecclesiastical censure* to pay their respective proportions towards that rate, unless any individual can prove himself to have been unequally assessed. On the whole therefore if some of the inhabitants of *F.* being joined by those of *H.* should out vote the rest of the parishioners, in every thing now proposed, those of the district of the mother church might nevertheless be relieved, in respect to all repairs really and absolutely necessary, by applying to the bishop of *London*'s chancellor, either to take a personal view, or to appoint surveyors to take a view for him, and report what is necessary and immediately wanting for the support of the church, and the decent performance of divine service. And, as to the additional buildings and erections, specified in the estimate, there is no doubt but that a vote for them may hereafter be obtained in vestry, (and of course a faculty,) if the inhabitants of *F.* are willing to take the expence upon themselves, and will declare their intention of not assessing the inhabitants of the hamlet of *H.* towards such new work. But it will be time enough for the inhabitants of *F.* to prove either of the methods by me proposed, after they have tried their success at a general vestry on due notice. I do not think that the inhabitants of the hamlet, can be bound by any act which they have as yet done.

Doctor's Commons, Sept. 26, 1767. *George Harris.*

In

In anſwer to the queſtion, *whether the inhabitants of H. are liable to contribute to any of the articles recited in the reſolutions entered into on the 1ſt of November* 1766? I am induced to think, that if the inhabitants of the hamlet ſhould not come to the veſtry, or be out-voted, they cannot be obliged to pay for *additions*; And therefore I apprehend, that they could only be compelled by a majority, to contribute to the new pews, where there were pews before, and of courſe to contribute towards part only of the *third* article, and towards the performance of the *fifth*, *ſixth*, *ſeventh*, *eighth*, *tenth*, and *twelve* articles, and part of the *ninth*; And that on this account, in order to avoid confuſion, there ought to be two rates, the one for the repair of the old work only, with an aſſeſſment on *all* the pariſhioners; and the other for the new work, with an aſſeſſments on the inhabitants of *F.* only: I muſt add however, that I know of no adjudged caſe in regard to the points laſt mentioned, and that I take them to be new, and not to have been hitherto judicially determined: I would not however be underſtood to ſay, but that a majority of the *hamlet inhabitants* would bind the *hamlet inhabitants* in reſpect to *additions* as well as *repairs*.

G. H.

C A S E.

The examination of A. taken upon oath before two magiſtrates the 17th of June 1767.

THE ſaid examinant ſaith, That on the 20th day of *April* 1766, *E.* a clergyman invited him and one *B.* to his houſe; that *B.* went away about *ten* o'clock at night, when the ſaid examinant got up intending to go home, but that the ſaid *E.* would not ſuffer him to go away. That *E.* ſat down by him, put his arm round his neck, and called him his dear *Tom*, and offered to put his hand into his breeches, which the ſaid examinant hindered him from effecting: That the ſaid *E.* unbuttoned his own breeches and ſhewed his ſecret parts, put his member into the left hand of the ſaid examinant, who knocked him into his chair with his right hand: That the ſaid *E.* is commonly reputed to be a drunkard and a profane ſwearer, and that he has heard the ſaid *E.* ſwear by his Maker many times.

The examination of B. taken upon oath before two magiſtrates, the ſame day and year aforeſaid.

THIS examinant ſaith, That *E.* a clergyman is reputed to be a drunkard and a profane ſwearer, that he hath ſeen him drunk ſeveral times, and heard him ſwear profanely by his Maker, *&c.* That in

the

the beginning of *May* 1766, the ſaid *E.* invited this examinant into his houſe, and entertained him with punch, that about *twelve* of the clock at night, when they were in the parlour together, the ſaid *E.* took up a glaſs of punch and pronounced two obſcene words as a health to be drank, that he this examinant was much offended with his indecent behaviour: That the ſaid *E.* called him his dear, and endeavoured to put this examinant's hand into his the ſaid *E.*'s breeches: That the ſaid *E.* put his hand into this examinant's breeches in the parlour in a forceable manner when he was going out of the room and got hold of his member: That he this examinant called him a *buggering devil*, and told him that he was fitter for the gallows than for the pulpit: That the ſaid *E.* followed him to the ſtable, where this examinant told him, that if he did not keep off him he would ſtick him.

The examination of C. taken upon oath before two magiſtrates the day and year above written.

THIS examinant ſaith, that *E.* a clergyman is a lewd man addicted to drinking and profane ſwearing, That the ſaid *E.* invited him this examinant to his houſe in *April* 1766: That he dined and ſupped with him and continued there all night: That two gentlemen his gueſts being gone to bed, the ſaid *E.* tampered with this examinant as if he had been a young woman: That he invited this examinant to have gone to bed with him, tha the put his member, into this examinant's hand; and this examinant ſaith, he verily believes that the ſaid *E.* would willingly have committed a deteſtable and unnatural act on him, in caſe this examinant would have conſented to it.

Query, Pleaſe to peruſe the above examinations, and then give your opinion, whether the abovenamed *E.* may not be bound to his good behaviour for the above offences? And whether an indictment will not lie againſt the ſaid *E.*? And whether he may not be puniſhed, and how, and in what manner in the *Eccleſiaſtical courts?* And upon the whole, pleaſe to give your opinion, what method will be moſt eligible to be taken againſt the ſaid *E.* ſo as moſt effectually to puniſh him for the above vices?

Opinion. The behaviour of *E.* ſtated in the examinations is ſuch as will, in my opinion ſubject him to proſecutions both in the *temporal* and *ſpiritual* courts; for I conceive the attempts above ſtated, are breaches of the peace, and he may be bound to his good behaviour: *And alſo* may be indicted for an aſſault with an intent to commit *ſodomy*; And he may alſo be proceeded againſt in the *ſpiritual court* for profaneneſs, drunkeneſs, and immorality, and be deprived of his benefice, and all theſe proceedings do not ſeem to me to exceed the enormity of his offences.

Brampton, Oct. 17, 1767. Ja. *Wallace.*

Opinion.

CASE.

June 7, 1759. UPON an appeal to the commiſſioners, from a charge made by the ſurveyor of the windows, the following caſe is ſtated at the requeſt of the ſurveyor, purſuant to the directions of the act of parliament.

The appellant is by the aſſeſſors of the pariſh, charged with *twenty-three* windows or lights; by the ſurveyor he is charged with *twenty-five* windows or lights To which ſurcharge of the ſurveyor the appellant has appealed to the commiſſioners, and ſaith, he hath but *twenty-three* windows or lights; for that the windows or lights, above or on each ſide the door to the entrance of the houſe, ſhould only be computed as one window or light, for that both thoſe windows or lights, on each ſide the door, were within the ſpace of *twelve inches* from the window or light above the door: upon which appeal the commiſſioners were of opinion, that they ſhould be deemed as one window only. The ſurveyor on the other hand, ſuggeſted, that the *twelve inches* allowed by act of parliament had only relation to windows or lights in *one frame*, which was not the preſent caſe; for all the *three* windows or lights, were in *ſeperate frames*, and a doorway or entrance into the houſe was between *two* of the windows charged. *And* although the windows above the door was within *twelve inches* of the other windows on each ſide; yet it could not be within the intent and meaning of the act of parliament, that they ſhould be charged only as *one* window or light; for if the window or light above the door was ſtopped up, there would not then remain any doubt, but that the windows or lights on each ſide of the door muſt be charged as ſeparate windows or lights: We therefore, the major part of the commiſſioners preſent at the ſaid appeal, at the requeſt of the ſurveyor, have ſtated and ſigned this caſe; and humbly ſubmit it to your lordſhips opinion, whether the ſaid windows or lights ſhould be charged as *three* windows or lights, or as *one* window only.

J. W. Mayor.
R. W. *W. B.*

Opinion. We are of opinion that the judgment of the commiſſioners is miſtaken.

Serjeant's-Inn, June 28, 1760.

Mansfield.
J. Willes.
T. Parker.
M. Foſter.
E. Clive.

CASE.

E. S. by her will dated the 4th of *May* 1733, and codicils thereto, makes the following bequeſts, *viz.*

"I give

"I give towards the ſupport of the infirmary, 500 *l.*

"I give to the governors of *Bethlam* hoſpital, for the uſe of "the incurables of the ſaid hoſpital, 500 *l.* I give to the go- "vernors of any other hoſpital that ſhall be erected for other "incurables in *three years* after my deceaſe, the ſame ſum of "500 *l.*

"I give to the infirmary in *Weſtminſter* the ſum of 500 *l.* and "I give 300 *l.* more to the uſe of any incurables if there "ſhall be any ward erected or built for ſuch a charity, in *three* "*years* after my death."

The ſaid *E. S.* died about *Chriſtmas* 1734, and *N.* her executrix ſoon after proved her will, and in *Auguſt* 1735, paid to the treaſurer of the infirmary the above legacies of 500 *l.* and 200 *l.* and the 16th of *January* laſt, ſhe paid to the ſaid treaſurer the legacy of 300 *l.* given for the uſe of incurables.

The firſt beneſaction given to the infirmary for incurables, was upon the 20th of *November* 1734, and about the 26th of *March* 1735, one incurable patient was admitted on that fund, and as the fund has increaſed, they have from time to time admitted more incurable patients, but no particular ward was appointed for receiving thoſe patients till about the 2d of *February* 1736, when a houſe was taken for that purpoſe.

No other hoſpital for incurables has been erected ſince *E. S.*'s death, but that of the infirmary.

Query, Whether the ſaid infirmary is entitled to the above legacy of 500 *l.* there having been a houſe or ward taken for the uſe of incurables within *three years* after the death of the teſtatrix?

Opinion. The clauſes are ſo differently penned, that I think the infirmary is not entitled to the 500 *l.* and I think it more adviſable for them in all views to leave it to the generoſity of the executrix, than to ſue for it.

Though no houſe was taken or ward actually erected for incurables, yet incurables were received into a proper apartment of the infirmary and provided for, therefore

Query, Whether the executrix would not be obliged to pay intereſt for the legacy of 300 *l.* from the death of the teſtatrix, or from any other, and what time; and if the infirmary are entitled to the 500 *l.* for incurables, will they not likewiſe be entitled to intereſt for that legacy, and from what time?

Opinion. I think the executrix is not bound to pay intereſt for the 300 *l.* before the ward was particularly appointed for incurables, but from that time ſhe is.

March 11, 1737-8. *J. Verney.*

CASE.

THE Reverend Mr. *E. H.* one of the fellows of *Winchester College com. South'ton* by will dated the 5th of *Auguſt* 1580, DID, ong many other legacies, give and deviſe as follows, *viz.*

" ITEM I will that there be 20 *l.* by the year paid out of all " my lands in *Lyſle*, in the county of *Southampton* which I " lately purchaſed of *Thomas Dearinge* of *Lyſle* aforeſaid, Eſq; " for and towards the *exhibition*, and finding and providing of " *four* of my next kindred, of the name of *Hodſon*, at a gram- " mar ſchool or at any univerſity, that is to-ſay, to every of " the *four five pounds* by the year: And further I will, that " if there ſhall not be *four* males of the name of *Hodſon* de- " ſcended from *Thomas Hodſon* of *Haughton*, in the county " of *Stafford*, my great grandfather: Then I will that the " ſame 20 *l.* by the year, ſhall be paid out of my ſaid lands " unto *ten* poor ſcholars, at the direction of the warden and " burſar of St. *Mary*'s college for the time being. *And* " *whereas* the ſaid Mr. *Dearinge* holds of me the ſame lands in " *Lyſle*, by indenture of leaſe for many years to come, *Yielding* " and paying the foregoing yearly ſum of 20 *l.* unto me, my heirs " and aſſigns, with a covenant therein contained, that if he the " ſaid *Thomas Dearinge*, his heirs or aſſigns, do well and " truly content and pay unto my heirs, executors, or aſſigns, " the ſum of 320 *l.* of lawful money of *Great Britain*, at a cer- " tain day and place therein limited and appointed, that then " the ſame lands are to be reaſſured and conveyed back again " unto the ſaid *Thomas Dearinge*, his heirs or aſſigns, as in and " by the ſame indenture of leaſe more at large appears; I " will, that if the ſaid ſum of 320 *l.* be well and truly con- " tented and paid, according to the purport and true intent " and meaning of the ſame indenture of leaſe, that the ſaid " ſum of money ſhall be employed and beſtowed, at the diſ- " cretion of my executors, with the aid and aſſiſtance " of my overſeers, for the purchaſe of ſome lands or rents, to " the yearly value aforeſaid, to be given towards the *exhibition* " and finding and providing of ſcholars as aforeſaid, according " to the true intent and meaning of this my laſt will. *And* " I will, that all the evidences and writings concerning my " ſaid lands in *Lyſle*, ſhall be delivered unto the warden and the " burſars of St. *Mary*'s college aforeſaid for the time being, by " inventory indented, made between the ſaid warden and bur- " ſars and my executors, to be ſafely kept by the ſaid warden " and burſars, to the uſe aforeſaid, together with a true " copy of this my laſt will: *And* my will is that *Richard*

" *Hodſon* of *Maſſeware*, in the county of *Bucks*, my kinſman, " and the heirs male of his body lawfully begotten; and for " default of ſuch iſſue, to *Thomas Hodſon* of *Murſeley*, in the " ſaid county of *Bucks*, and the heirs males of his body, law- " fully begotten; and for default of ſuch iſſue, then to the heirs " male of the body of *Robert Hodſon* of *Wincheſter*, my *third* " brother lawfully begotten, ſhall have the letting and ſetting " of my ſaid lands in *Lyſle*, and the receiving of the rents, iſſues, " and profits thereof; and that my heirs, and ſuch as are to " have my ſaid lands in *Lyſle*, by virtue of this my laſt will " and teſtament, ſhall, before they receive any rent therefrom, " enter into *recognizance in the ſum of* 400 *l. unto the warden* " *and burſars of* St. Mary's *college aforeſaid for the time being, to* " *make a true and perfect account of the ſaid ſum of* 20 *l. by them* " *given and diſtributed towards the exhibition and finding of Scho-* " *lars, according to the true intent and meaning of this my laſt* " *will, in the* Whitſun-week, *or within ſix weeks after, once in* " *three years at the uttermoſt*; and ſhall bring certificates and " letters teſtimonial, unto the ſaid warden and burſars for the " time being, from ſuch ſcholars of my blood and kindred as " have received my *exhibitions* at their hands, and ſhall yield " up the ſame account in writing, to be laid up together with " the evidences of my ſaid lands, and ſhall forthwith give " unto the warden for the time being 6 *s.* 8 *d.* and to every " of the burſars 3 *s.* 4 *d.* and I will, that my executors pro- " cure my heirs, and ſuch as are to have my ſaid lands " in *Lyſle*, and the receiving of my rent of 20 *l.* by the year, " given towards the *exhibition* of ſcholars as aforeſaid by " order of the court of *Chancery*, to perform and fulfil " this my laſt will, touching the ſaid 20 *l.* by the " year given towards the finding of ſcholars as aforeſaid, the " which if they refuſe to do, my will is, that they ſhall loſe " all ſuch benefit as they are to have by virtue of this my " laſt will, touching the ſaid 20 *l.* by the year given by me " towards the finding of ſcholars as aforeſaid, as they will " anſwer to the contrary before the judgment ſeat of *God* " when the ſecrets of all hearts ſhall be revealed; and made " his kinſman *R. H.* and *T. H.* executors of his ſaid will; " and ordained, made and appointed *T. L.* Clerk, and *J. C.* " Clerk, Overſeers thereof."

In *Eaſter Term* 1676, *T. H.* and *J. H.* infants by *W. H.* their father and guardian and ſeveral others of the name of *H.* exhibited their bill in the High Court of *Chancery*, againſt *T. H.* Eſq; Sir *J. F.* Knt. *R. G* Eſq; and *T. B.* defendants, thereby ſetting forth the will of the ſaid *E. H.* And that the teſtator *E. H.* being dead, the ſaid *R. H.* his executor, received great benefit by the ſaid will; *And alſo* the ſaid 320 *l.* for the redemption of the ſaid land. And that the ſaid *R. H.* by his will dated the 5th day of *Auguſt* 1597, gave to his ſon

E.

E. all his lands, and willed and charged him that he and his heirs, for and out of the ſaid lands, in all things ever ſhould do, obſerve and perform the ſaid will of the ſaid *E.* deceaſed, according to the true intent and meaning thereof, concerning the ſaid annual ſum. And that *R. H.* being alſo dead, the ſaid *E.* his ſon and heir, taking the benefit of the will, and entering on the lands by his father's will to him deviſed by indenture, dated the 24d of *November* 1626, conveyed the ſaid lands therein particularly mentioned, charging them or intending to charge them with all the ſaid payments and perſormances, according to the ſaid *E.*'s will, unto one *J. N.* Eſq; his heirs and aſſigns for ever. And that the ſaid *J. N.* gave all and ſingular the ſaid lands, *ſubject* to the ſaid annuity, with his daughter in marriage, in part of her marriage portion, to Sir *J. H.* his heirs and aſſigns, for ever. And the ſaid Sir *J. H.* by his laſt will, deviſed the ſame lands, charged as aforeſaid, to his ſon the defendant, *T. H.* and his heirs for ever, and conſtituted the defendants Sir *J. F. R. G.* and *T. B.* Eſqrs. his executors, *In truſt* to pay the ſaid annual ſum, and to enter into the ſaid recognizance. And that the ſaid Sir *J. H.* dying *ſeven years* before the ſaid bill was exhibited, the defendants have received the profits of the land to near the value of 600 *l. per annum*, to the uſe of the ſaid *E.*'s will, but refuſed to pay the ſaid 20 *l. per annum*, or any part thereof, according to the plaintiff's will, and perform the ſaid wills and indentures, although ever ſince the death of the ſaid Sir *J. H.* the plaintiffs ſome *four* or other of them had diligently continued reſident at ſome ſchool or ſchools, univerſity or univerſities, according to the ſaid *E. H.*'s will, and the other will and indenture aforeſaid, they therefore demanded the annual ſum and the arrears thereof, from the death of Sir *J. H.* which was the 23d of *June* 1668, to the 24th of *June* 1674.

On the 18th of *June* 1677, *It was ordered and decreed*, that the lands at *Murſeley* in the county of *Bucks* formerly belonging to *E.* ſon of *R. H.* who afterwards ſold them to the ſaid *N.* and now belonging to the defendant Mr. *H.* ſhould ſtand chargeable with the payment of the *exhibition* of 20 *l. per annum*, for ever, according to the ſaid will of *E. H.* And that the ſame ſhould then after be paid half yearly, to wit, on the 15th day of *April*, and 19th of *October* in every year, at or upon the premiſes aforeſaid, the parties that ſhould ſo come to receive the ſame, producing ſufficient certificates, and well witneſſed, of ſuch perſons being well entitled to the ſame on whoſe behalf they ſhall ſo come.

And it was further ordered, that Sir *A. H.* Knt. one of the maſters of this court, ſhould look into the pedigrees, and ſee that the plaintiffs were entitled under the ſame, and alſo well qualified to receive the ſaid *exhibition* then due; and as oft as fewer than *four* of the *H.*'s claim the ſaid *exhibition*, that is to ſay if *three*, *two*, or *one* of them only, for any one at a time might claim and were capable to receive the ſame: Then for ſuch time ſo many of them as claimed ſhould

have yearly every of them 5 *l.* a piece. And that the ſaid plaintiffs and defendants ſhould proceed to an account before the ſaid maſter, touching the ſaid arrears of the ſaid *exhibition*. And what arrears the ſaid maſter ſhould certify due to the plaintiffs reſpectively or any them. *It was alſo further ordered and decreed*, that the defendant Mr. *H.* or other defendants on his behalf ſhould pay accordingly, and for their ſo doing, the ſaid defendants all and every of them ſhould be thereby, and by the decree of this court protected and ſaved harmleſs.

And it was further ordered and decreed, that when and as often as there ſhould want of the full number of *four* to have the ſaid 20 *l.* *per annum*, ſuch perſon and perſons, then to be admitted to make up the number, ſhould firſt attend the ſaid maſter and make it appear before him to his ſatisfaction, by *affidavits* or otherwiſe, as he ſhould think fit, that ſuch perſon or perſons, were rightfully entitled under the pedigree aforeſaid, and alſo ſufficiently qualified to receive the ſaid *exhibition*, on whoſe certificate thereof, the ſaid defendant Mr. *H.* or any other perſon or perſons under him, claiming the premiſes, chargeable with ſuch *exhibition*, ſhould accordingly pay the ſame; and upon their paying the ſame according to ſuch certificate, from time to time, ſhould be by this decree, well and ſufficiently ſaved harmleſs and indemnified in ſo doing.

And it was thereby declared, that in making up of the ſaid number of *four* qualified to receive the ſaid *exhibition*, ſuch of the kindred of the ſaid *E. H.* the deviſor ought to be preferred before others, as ſhould be of the age of *eight years* and under, of the degree of *Maſter of Arts*, and neareſt of kin to him the ſaid *E. H.* the firſt donor. And as to the charges of this ſuit which had been borne and ſuſtained, by *T.* and *J.* ſons of *T. H.* of *H.* in the county of *Stafford*, it was thought reaſonable, and the conſent of the ſaid plaintiffs further ordered that every of the next of kin of the *H.* that ſhould then after be admitted to the ſaid *exhibition*, ſhould upon ſuch their admittance, pay unto the ſaid *T.* and *J. H.* the ſaid ſons of the ſaid *T. H.* or either of them, their executors, adminiſtrators, or aſſigns, the ſum of 4 *l.* a piece, for and in reſpect of the charges aforeſaid.

And for as much as there were certain depoſitions taken in this court in the year 1658, in a cauſe where *W. H.* and others by their guardians, were plaintiffs, againſt *J. H.* and others defendants, which concerned the matters and pedigree in queſtion; *It was further ordered*, that the ſaid depoſitions ſhould be uſed as evidence in this cauſe before the ſaid maſter as effectually as if they had been taken in this cauſe.

The 3d of *July* 1667, the maſter made his report, and certified, that the plaintiffs were well entitled to the *exhibition* of 20 *l.* *per annum*, and annexed a pedigree to his report of the family of *H.*

The ſaid report was confirmed by the court, and directions given for paying the ſaid *exhibition* according to the ſaid decree.

The warden and burſars filed their bill in this court againſt *T. H.* Eſq; Sir *J. F.* Knt. *R. G.* Eſq; and *T. B.* Gent. And the ſubſtance of the plaintiff's bill appeared to be, that *E. H.* in *Auguſt* 1580, made his will in writing, and thereby *(inter alia)* bequeathed to *four* of the next of kin, and name of *H.* 20 *l. per annum*, to be equally divided amongſt them, ſo long as they ſhould continue at a *grammar ſchool* or any *univerſity*. And for want of *four* of that name, or any of them, ſuch part ſo wanting, ſhould remain to the warden and burſars of the ſaid college, to be diſpoſed of among *ten* poor ſcholars, at their diſcretion, which annuity was afterwards charged on lands in *Murſeley* in the county of *Bucks*, lately belonging to Sir *J. H.* deceaſed.

And the ſaid bill further ſets forth, That *L. H.* one of the *four* perſons that received the *exhibition*, about the 29th of *Auguſt* 1670, died, ſo that for *ſix years* afterwards, there were but *three* that were entitled to their parts of the 20 *l. per annum*, who received it, and the other *fourth* part was then due to the plaintiffs as aforeſaid, which comes to 39 *l.* being for *ſix years* to 1671. And Sir *J. H.* being dead, the premiſes are deſcended to the defendant *H.* his ſon, Sir *J.* having made his will, and the other defendants executors thereof, who ought to pay the ſaid 39 *l.* but the ſaid defendants the executors, ſcruple to pay it, doubting whether they can ſafely do it, without the order and protection of this court, and forbear payment thereof, whereby the plaintiffs cannot diſcharge their truſt in diſpoſing of it as is directed, ſo that the defendants may be ordered to pay the plaintiffs the 39 *l.* that ſo they may be enabled to perform their truſt, is the ſcope of the bill; *Whereto* the defendants, by anſwer confeſs, that it may be true that *E. H.* made ſuch will, and gave ſuch *exhibition*, chargeable on ſuch lands, as in the ſaid bill is ſet forth, and acknowledge ſuch lands are come to the defendant *H.* and believe there is 39 *l.* unpaid of the *exhibition* for the fines in the bill, for the reaſons therein contained. And the defendants Sir *J. F. R. G.* and *T. B.* acknowledge they are executors of Sir *J. H.*'s will, and that the ſame is proved; And confeſs they are adviſed not to pay the money without the order of this court; but if this court ſhall think fit, that the ſaid 39 *l.* ſhall be paid to the plaintiffs, the ſaid defendants are ready to ſubmit to the judgment of this court, they being protected thereby. This court thereupon, and upon debate of the matter and hearing what was alledged on either ſide, do think fit, and ſo order and decree, that the ſaid defendants do pay the 39 *l.* aforeſaid, unto the plaintiffs, to be by them diſpoſed of according to the will of the ſaid donor. And the ſaid defendants in paying the ſaid money as aforeſaid, are protected and ſaved harmleſs by this preſent order and decree againſt all perſons that ſhall or may claim the ſame.

On the 12th *December* 1766, The agent of *J. S.* Esq; (the present owner of the estate) delivered in an account of monies admitted to be due to the college from *Holy Thursday* 1747, to *Holy Thursday* 1758, by which there appears to be due to the college, the exact sum of 100 *l.* And by an account taken from *Holy Thursday* 1758, to *Holy Thursday* 1766, the further sum of 58 *l.* 15 *s.* making together the sum of 158 *l.* 15 *s.*

The college of *Winchester* calling on Mr. *S.* for payment of the said 158 *l.* 15 *s.* he objects thereto, unless the college will allow the land tax for the respective sums due to them in each year, which the college have declined doing, as the same has never been allowed by them, and as the payment of the 20 *l.* a year was to be an entire sum out of the estate: And the college conceive they ought to be allowed interest for the money due to them from the end of every *three years* being the time appointed by *E. H.*'s will, for the settling accounts and paying the balances.

Query, Whether Mr. *S.* has a right to deduct the land tax for the money due from him to the college?

Opinion. In general, estates given to charities contribute to the land tax as well as other estates; but as the land tax act says, that the act shall not extend to charge any *scholars* or *exhibitions* of *Winchester*, (amongst other colleges), or any *reader*, *officer* or *rector*, in respect of any *stipend* or *exhibition*; and as these *exhibitions* come within that description, I conceive, they are not liable to contribute to that tax.

Query, As Mr. *S.* has not delivered to the college any accounts at the end of every *three years*, as directed by *E. H.*'s will, can the college compel him to pay interest for all such sums of money as are due to them, from the end of every such *three years*?

Opinion. I think there have not been such measures taken, as will entitle the college to interest, I do not perceive that any *recognizance* has been given, or that the college has ever demanded any account. The other now comes from the owner of the estate. The balance is uncertain, it does not appear what reasons have prevented the account before, or have produced it now: And I see that neither the decree of 1674, nor that of 1678, has given interest for the sums then due.

July 28, 1767. *William De Grey.*

CASE.

C A S E.

IN *the name of* GOD *Amen.* I *E. G.* of *Shepton Mallet*, in the county of *Somerſet*, ſtocking-maker, being firm of body and of perfect memory, DO ordain and make this my laſt will and teſtament, this 17th day of *February*, *anno* 1723, revoking all former wills and teſtaments ever by me made or declared, *viz.* And firſt I commend my ſoul into the hands of the *Almighty God* my creator, and *Jeſus Chriſt* my redeemer, and my *worldly eſtate* as followeth: *And whereas, I am ſeized in fee ſimple of a meſſuage and tenement, called* Wookey's Tenement, *in the pariſh aforeſaid, which tenement* I give and bequeath unto my ſiſter *E.* for her natural life, paying unto my heirs hereafter mentioned, the yearly rent of *five ſhillings*: And I give unto my ſiſter *K. P. ten ſhillings*: *Item*, I give all my goods and chattels unto my brother *R.*'s children then living, equally to be divided betwixt them. *Item.* All my *lands* I am now poſſeſſed of in *Shepton Mallet*, I give, deviſe, and bequeath, unto my nephew *S. G.* whom I make whole and ſole executor of this my laſt will and teſtament.

E. G.

Signed, ſealed and delivered, in the preſence of us

J. P. J. B. A. B.

The meſſuage called *Wookey's*, deviſed to the teſtator's ſiſter *E.* is a ſmall part of his eſtate, and the other part conſiſts of lands, which *E. G. the heir at law of the teſtator claims*, inſiſting on *S.*'s *intereſt* to be only *an eſtate for life*. Some part of the lands belong to the meſſuage called *Wookey's*, and other part are a diſtinct property.

Query, To whom does each, belong, *(S. being dead,)* whether to his heir at law, or to the teſtator's ſiſter?

Opinion. I am of opinion, that *S.* took the lands in *Shepton Mallet* in fee ſimple, with the reverſion in fee of *Wookey's Tenement*, expectant on *E.*'s eſtate for life. The *five ſhilling* rent is directed to be paid by *E.* to *S.* as *the heir* aftermentioned. This ſhews that he meant the inheritance to *S.* and his heirs. He is alſo made *whole* and ſole executor.

Aug. 12, 1767. *C. Yorke.*

CASE.

C A S E.

MR. *H.* and *J. B.* Eſq; as his ſurety gave their bond to Mr. *V.* for 700 *l.* or thereabouts.

Mr. *V.* afterwards became indebted to Mr. *H.* in the ſum of 90 *l.* for goods ſold and delivered.

Mr. *V.* being indebted to Sir *S.* and Sir *T. F.* in a larger ſum than the money ſecured by the bond, aſſigned over this bond to them as a ſecurity towards ſatisfaction of their debt.

Mr. *V.* lately became a bankrupt, and Sir *S.* and Sir *T. F.* are the aſſignees under the commiſſion.

You will obſerve that *V.* is indebted as above to *H.* in 90 *l.* but is indebted to Mr. *B.* the ſurety in no money whatſoever.

Query, Can Mr. *H.* ſet off the 20 *l.* towards payment of what was due on the ſaid bond, or muſt he and his ſurety the ſaid Mr. *B.* pay the ſaid Sir *S.* and Sir *T. F.* as aſſignees of the ſaid *V.* before he became a bankrupt, the whole of the money ſecured by the bond, ſo as to leave *H.* without any remedy as to the ſaid 90 *l.* otherwiſe than by proving his debt and taking his dividend under the ſaid commiſſion?

Opinion. If this be a joint and ſeveral bond, ſo that *B.* alone may be compelled to pay the whole, in an action at law; I ſee not how the ſet-off can avail him, without reſorting to a court of *equity*, where, in as much as *H.* was the principal debtor, and Mr. *B.* only his ſurety, and the eſtate of *V.* and all claiming under him is indebted to *H.* in 90 *l.* I am of opinion an allowance would be made by way of ſet-off for the 90 *l.* ſo due to *H.* and as power is given to the commiſſioners by *ſtat.* 5 *Geo.* 2. *cap.* 30. *ſect.* 28. to adjuſt and balance mutual accounts, I think that on Mr. *H.*'s application to them, diſcloſing the above circumſtances and offering to pay the balance, that they will order accordingly; or if they decline it, that the *Lord Chancellor* would grant relief in a ſummary way by petition.

Lincoln's Inn, June 30, 1767. *Francis Filmer.*

CASE.

CASE.

MESSrs. *H. S.* and *J. S.* have lately purchaſed in *fee*, ALL that manor or reputed manor of *M.* in the county of *S.* with the rights, members, and appurtenances thereof, together with all and ſingular *court-leets*, *court barons*, *view of frank-pledge*, *perquiſites* and *profits of courts*, *waifes*, *eſtrays*, *goods and chattels of felons* and *fugitives*; and ſeveral meſſuages, cottages, farms, lands, tenements, meadows, paſtures, feedings, commons, common of paſture, ways, eaſements, waters, watercourſes, trees and underwoods, with the ground and ſoil thereof, free-warrens, fiſh-ponds, fiſh-pools, fiſhing-places, royalties, franchiſes, liberties, profits and rents of all ſorts, commodities, emoluments, hereditaments, and appurtenances whatſoever to the ſaid manor belonging.

There has always been for time immemorial, annually paid at the *court-leet* held for the ſame manor, *certain rents called tything-waits* which have been collected on the inhabitants of the ſeveral tythings lying within the ſaid manor, amounting to certain diſtinct ſums on each tything, by the tything-men thereof, and other rents called *moor-rents*, time alſo immemorial collected and paid at the *court-leet* by a *graſs-hayward* out of of *three* the tythings belonging to the ſaid manor, for and in reſpect of the rights of common, the cottagers and other the inhabitants within the ſame manor uſed and enjoyed, which rents have been collected by the *graſs-haywards*, and paid to the lord or ſteward, at the *court-leets*; and it has been alſo the immemorial cuſtom of the tything-men, and the *graſs-haywards*, to collect more out of the reſpective tythings than is due, claimed, or received, by the lord of the manor, part of which has been paid to the *ſheriff's-tourn*, and the reſidue, (after-paying the lord his uſual rent), has been retained by the tithing-men; the lord of the manor no ways ever interfered in aſſeſſing the *quantum* to be paid by each cottager or eſtate, but has been always collected, according to an old liſt by the tything-men, in reſpect to the *tything-waits*, and the *graſs-haywards*, in reſpect to the *moor-rents*.

Several eſtates lying within the ſeveral tythings of the manor, *As alſo* the three tythings uſually paying the *moor-rents* have been ſold off by ſeveral preceding lords in *fee*, diſcharged from all incumbrances whatever, *except annual fee-farm-rents*. The ſaid Meſſrs. *H. S.* and *J. S.* have ſold off eſtates in the ſame manner; but theſe eſtates ſold off by theſe antient lords, have paid for a great number of years to the tything-men and *graſs-haywards* their uſual and proportionable parts towards the ſaid rents, till within theſe *two years*, who now ſay, that by certain covenants in their title-deeds they are diſcharged from the ſame.

Query, As theſe rents called *tything-waits* and *moor-rents* for the major part have been paid by the proprietors of the land ſo ſold off, according to their proportionable parts as aſſeſſed by the tything-men and *graſs-haywards* towards theſe rents above *twenty years* laſt paſt, though diſcharged in the conveyances from all incumbrances *except annual fee-farm-rents*, as have alſo the owner of the eſtates ſold off by the ſaid Meſſrs. *H. S.* and *J. S.* after the ſame manner, will thoſe eſtates formerly ſold off by the former lords, be chargeable and liable to pay their uſual proportions, towards the ſaid rents, and will the other lands ſold off by the ſaid Meſſrs. *H. S.* and *J. S.* be alſo chargeable with their proportionable parts? If ſo, what proceeding at law would be moſt adviſeable to be taken to oblige them to pay the ſame?

Opinion. Theſe payments called *tything-waits*, are I apprehend what is called the *certum letæ* or *common fine* uſually paid in many *leets* to the lord, and where they are regulated and apportioned according to the value of the eſtates, and the proportions ſo anciently adjuſted and paid by the owners or occupiers of the reſpective tenements, I ſee no reaſon why they may not be diſcharged by the lord, upon alienation of the freehold of the tenements, or by releaſe to the owners. For the payments are in idea of law, founded upon the expence the lord, in ancient times was at, in procuring the grant of the *leet*, and being regulated by the eſtates, there is no reaſon why they may not be diſcharged. The reaſon holds much ſtronger in reſpect of the *moor-rents*, which are payments for depaſturing the cattle kept on the tenements on the waſte, and which the lord ſeems by ſuch conveyances, to indulge the free uſe of, without any *fee-farm rent*. Therefore it ſeems to me, that the purchaſers of the manor will have very little chance to recover thoſe payments againſt ſuch ſtrong words in the conveyances, eſpecially the late one. However as to thoſe of long ſtanding, where the payments have, notwithſtanding ſuch words in the conveyances been continued, it may be an argument of ſome weight, that the continuation ſhews that theſe payments were not meant to be extinguiſhed, but on the other hand, I fear it will be very difficult to get over it.

The ſtrongeſt circumſtance for the lord is, that part of theſe payments is rendered to the ſheriff, but the anſwer to that is, that the lord might diſcharge what was due to him, though not to the ſheriff, ſo that part may ſtill be payable, though the other is diſcharged.

As to the remedy (if theſe gentlemen are willing to bring the matter in queſtion), it is not ſtated, whether there has been an uſage to diſtrain, without which I think, at leaſt for the *tything-*

tything-waits, a diſtreſs cannot be taken, for they are conſidered in point of law, as againſt common right; but an action of debt may be maintained: *And alſo* if they are preſented at the court, that they ought to make ſuch payments, and are *amerced* for not paying them and the *amerciaments* affeered, which preſentment of the preſent ſums, amerciaments, and affeerments, muſt be diſtinct, I think the *amerciaments* may be diſtrained for, but the diſtreſs cannot be ſold.

pril 27, 1761. *H. Gould.*

C A S E.

MESSrs. *H. S.* and *J. S.* have purchaſed in *fee* all that manor, or reputed manor, of *M. &c.* (as in the foregoing caſe).

the memory of man no diſtreſs has been made on perſons refuto pay their *quota's*, a bill in the *Exchequer* was once preferred ſt an inhabitant, on that account, who ſoon complied, by paying and coſts.

uery, As theſe rents called *tything-waits* and *moor-rents* for the major part have been paid by the proprietors of the lands ſo ſold off, according to their proportionable part as aſſeſſed by the *tything-men* and *graſs-haywards*, towards theſe rents above *twenty years* laſt paſt, though diſcharged alſo in the conveyances from incumbrances, *except the annual fee-farm rents*, as have alſo the owners of the eſtates ſold off by the ſaid Meſſrs. *H. S.* and *J. S.* after the ſame manner; will thoſe eſtates formerly ſold off by the former lords, as thoſe ſold off by the ſaid Meſſrs. *H. S.* and *J. S.* under the aforeſaid predicament, be liable to pay towards the ſaid aſſeſſments as before they uſually did? If ſo, what proceeding at law would be moſt adviſeable to take, to oblige them to pay the ſame?

Note. If Mr. *Burland* ſhould be of opinion, that theſe *rents* or *fines* are recoverable, Meſſrs. *H. S.* and *J. S.* are determined to put the ſame under his conduct.

inion. If the proportions paid by each articular eſtate towards the *tything-waits* and *moor-rents* were certain and diſtinct, and the conveyances in *fee* from the lord of the manor *free from all incumbrances*, were all modern, I ſhould be of opinion, that by ſuch conveyances the grantees would have a right *To hold* their lands diſcharged from thoſe payments; but as the greateſt part of theſe conveyances are ancient, (ſome, as appear by the ſtate of the other caſes herewith left, more than 100 *years* ago), and theſe payments have been conſtantly made ever

ſince, until the preſent diſpute began, I am of opinion, th they cannot be conſidered now as having been diſcharged t thoſe general words of *exemption from all incumbrances*, but th the long courſe and ſeries of payment that have been ma ever ſince theſe conveyances will be ſufficient evidence of t lord's right. I don't indeed underſtand by what tenure t lands were held before they were conveyed in *fee* to the ſev ral tenants; if by leaſe, no ſuch payments could be due but reſervation, and then when the leaſes determined, the payme would determine likewiſe; if by copy of court roll, they were d by cuſtom, and then a grant of the land in *fee ſimple* wou I think, deſtroy that cuſtom, but ſtill I think, the conſt payments, eſpecially where a part of the money collected for other uſes than the lords, will eſtabliſh the right, and ra a preſumption of ſome other deed on the part of the grante undertaking and granting to pay theſe ſums notwithſtandi the alteration of their tenure. The beſt way to recover th rents is to prevail on the *leet-jury*, if poſſible, to preſent a *amerce* the ſeveral *tything-men* and *graſs-haywards* for non-pa ment of their reſpective *waites* and *rents*, and then to diſtra or bring an action of debt for the *amercement*, or otherwiſe file a bill in the *Exchequer*, againſt the ſeveral landholders, account for the ſums they ought to pay, for I apprehend will be difficult to aſcertain the proportions of each tenan due to the lord, ſo as to maintain an action of debt.

Serjeant's Inn, Nov. 27, 1767. *J. Burland.*

CASE.

THE lords of the lordſhip or manor of *M*—— having (ev ſince it was granted by King *James* to Lord *M.*) always ke a *court-leet* where the conſtables of the hundred are choſen, and *ty ing-men* for ſeven tythings, and there always was, time immemorial, cuſtom for the ſaid *tything-men* to pay into the hands of the ſtewa in open court, certain ſums of money by them collected in their r ſpective *tythings* by a rate kept among themſelves, and not by t lord or ſteward in the name of *tything-waits*; and in three of the ſ tythings other monies were paid by the *graſs-haywards* in the name *moor-rents*, and by them collected as the others, in their reſpect tythings, namely *M*——, *H*——, and *H*——.

	Tything-waits.			Moor-rents.		
	l.	*s.*	*d.*	*l.*	*s.*	*d.*
Martock pays - -	0	15	0	0	17	4
Henton - - -	1	0	0	0	18	4
Hurſt - -	0	17	0	0	10	0

Lord *M.* in his life time ſold off part of the ſaid manor in *fee* with the lord's rents, then afterwards ſold the reſidue of the ſaid manor to —*S.* Eſq; who ſold off more of it in *fee*, but always received the ſaid *tything-waits* and *moor-rents* of the ſaid courts, then *S.* ſold the reſidue of the ſaid manor, with the privileges and perquiſites of courts, *&c.* to *B.* who ſold off more of it in *fee*, but he ſtill received the ſaid *moor-rents* and *tything-waits*, Mr. *B.* ſold the ſaid manor, or reputed manor, or reſidue thereof, together with the *court-barons*, *court-leets*, *view of frank-pledge*, *perquiſites*, and *profits of courts*, &c. to the ſaid *H. S.* and *J. S.* the preſent lords, *Anno* 1759, ſince which purchaſe, ſeveral perſons who always paid their reſpective ſhares towards the ſaid ſums in the *tythings* of *M*——, *H*——, and *H*——, now refuſe, on pretence that their lands were conveyed by the preceding lords of the ſaid manor, without any rents reſerved.

Query 1ſt, Is the ſaid money to be recovered in law or equity; if ſo, who is to be ſued, the officers for not paying it into court, or the perſons that refuſe to pay them? The jury of the *court leet* have frequently refuſed to make the proper preſentments relating to the premiſes, and it is ſuppoſed will perſiſt in ſuch refuſal.

Query 2d. Is there any remedy againſt the jury on the above-mentioned account?

Opinion. I think, that the ſaid monies are recoverable by law; and the proper method for enforcing the payment thereof ſeems to be, for the ſteward of the court to fine the jury, who ſhall refuſe to make the proper preſentments, or (if ſuch preſentments be made), to fine the ſaid officers, if they refuſe to pay the ſums; (which ſaid fines muſt be impoſed on the ſaid jurors and officers, not jointly but ſeverally): And I apprehend, that the lord may afterwards diſtrain for ſuch fines, or bring an action at law for the ſame, at his election.

Dec. 10, 1762. *G. Andrews.*

CASE.

C A S E.

S. B. and *J. B.* under the will of their father, were ſeized in *fee tail general* of the equity of redemption of meſſuages and lands in *B. ſubject* to a mortgage in *fee* made by him for 400 *l.*

S. married, and in 1766, ſhe, with Mr. *T. B.* her huſband, levied a fine and ſuffered a recovery of an undivided moiety of the ſaid premiſes, to the precipe of which recovery, a tenant was made by leaſe and releaſe, with the concurrence of the mortgagee, and by the fine levied by the ſaid *B.* and his wife; and the uſes of the ſaid recovery, were by the ſaid releaſe declared.

To the uſe of ſaid mortgagee and his heirs, for the better ſecuring 200 *l.* with intereſt. And after payment thereof,

To the uſe of the ſaid *T. B.* the huſband for his life, without impeachment of waſte.

To the uſe of truſtees to preſerve the contingent uſes and eſtates, *&c.*

To the uſe of the ſaid *S.* for life, without impeachment of waſte.

To the uſe of truſtees to preſerve the contingent uſes and eſtates, *&c.*

To the uſe of ſuch ſon, or ſons, daughter, or daughters of the ſaid *T. B.* by the ſaid *S.* his wife, for ſuch eſtate or eſtates, in fee-ſimple or otherwiſe, and in ſuch manner and form as they by deed ſhould direct, limit, or appoint; and in default thereof,

To the uſe of all and every the ſon, or ſons, daughter, or daughters, for ſuch eſtate or eſtates, in fee-ſimple or otherwiſe, and in ſuch manner and form as the ſurvivor ſhould by deed or will, direct, limit, or appoint; and in default thereof,

To the uſe of all and every the ſon, and ſons, daughter, and daughters, their heirs and aſſigns for ever, as tenants in common, and not as joint-tenants, if more than one, and if but one, then *To the uſe* of ſuch only child, his or her heirs and *aſſigns*, for ever; And if no ſuch child or children ſhould be living at the time of the death of the ſurvivor of them the ſaid *T.* and *S.* then *To the uſe* of ſuch perſon, or perſons, for ſuch eſtate or eſtates in *fee-ſimple* or otherwiſe, and in ſuch manner and form as the ſurvivor ſhould by deed or will, nominate, direct, limit, or appoint; and in default thereof,

To

To the only proper uſe of the right heirs of the ſurvivor for ever.

A power is reſerved for the perſons entitled to the equity of redemption for the time being, to raiſe money by mortgage or ſale, to pay off the 200*l.* and intereſt, and a moiety of the legacies therein mentioned.

The above fine and recovery have been accordingly levied and ſuffered.

All the parties are living, and there is a ſon, the only child of the marriage, about *twelve months* old.

J. B. the other daughter is alſo married to Mr. *J. G.* but before her marriage, by leaſe and releaſe, in which the mortgagee likewiſe concurred, made a tenant to the precipe of her undivided moiety of the ſaid premiſes for ſuffering a recovery thereof, which recovery was accordingly ſuffered, and the uſes declared to the ſaid mortgagee *in fee*, for ſecuring the other 200 *l.* and intereſt and *ſubject* to ſuch payment to herſelf *in fee*.

The ſaid *J. B.* being thus entitled to the equity of redemption immediately before the ſaid marriage, which was about *three months* ago, in conſideration of a competent jointure, conveyed the ſame to *W. F.* Gent. *In truſt* for the ſaid *J. G.*

Query, Your opinion is deſired, whether a partition of the ſaid premiſes can by any, and what eaſy method to the parties, and by what parties, be effectually made, to bind not only themſelves, but the iſſue of the ſaid *T. B.* and his wife? If it can be done, by what method, and at whoſe expence? The mortgagee has received Mr. *G.*'s 200*l.* but has executed no conveyance of the moiety to him. He has ſigned the receipt annexed, and is he not obliged to convey, when properly requeſted, at the peril of coſt?

Opinion. I am of opinion, that a partition of the ſaid premiſes may be enforced by a bill in equity, and that the ſame will be the moſt eaſy, expeditious, and effectual method, and which will bind all the parties to the ſuit, and when made under the authority of the court, will alſo bind any iſſue of *T. B.* and his wife, which may hereafter be born. The coſts of ſuch ſuit will be borne in moieties, one moiety by Mr. *G.* and the other moiety by Mr. *B.* as they will have equal benefit of the ſuit; and I think ſuch bill ſhould be brought by *J. G.* and *W. F.* his truſtee, againſt *T. B.* and *S.* his wife, and their ſon and only child, and the mortgagee. I think the mortgagee

mortgagee is compellable to execute a re-conveyance of one moiety of the mortgaged premiſes to Mr. *G. in fee*, and that a proper conveyance for that purpoſe, ſhould be prepared by Mr. *G.* and tendered to the mortgagee to be executed; and in caſe he refuſed to execute the ſame, I conceive a court of equity would oblige him to pay the coſts occaſioned by ſuch refuſal.

Nov. 17, 1767. *R. Perryn.*

14th *Nov.* 1767.

Received of Mr. *G.* the ſum of 200 *l.* being one moiety of the principal money due to me on a mortgage of the late Mr. *R. B.*'s eſtate at *B.* and 5 *l.* 5 *s.* for the intereſt thereof, to this time; and I do hereby diſcharge him and his moiety of the ſaid eſtate, of and from the ſame; *And alſo* of and from the remaining principal and intereſt due, or which ſhall or may accrue, or become due thereon, WITNESS my hand

R. R.

CASE.

C. P. Eſq; by his will dated the 3d day of *February* 1753, after bequeathing an annuity of 33 *l.* to his ſiſter *J. P.* for life, payable out of his eſtates at *W. C. W. W.* and *K. Gave to A. P.* ſon of his brother *J. P.* and to the heirs of his body, ALL thoſe his laſt mentioned eſtates, And if he died under age, the teſtator deviſed the ſame to *A. P.* ſon of his brother *A. P.* and to the heirs of his body; and in caſe both nephews ſhould die under age, then the teſtator deviſed the ſaid eſtates to his brother *J. P.* and his heirs.

A. the ſon of *J. P.* has attained his age of *twenty-one*, but is not the heir at law of the teſtator.

Query, Can *A.* the ſon of *J. P.* by levying a fine, create a *fee*; or is a recovery neceſſary for that purpoſe?

Opinion. A. the ſon of *J. P.* being only tenant in tail, and not having the immediate reverſion *in fee* in himſelf, I am of opinion that a recovery is abſolutely neceſſary to procure him the *fee-ſimple* of the eſtates deviſed.

Feb. 10, 1768. *W. Rivet.*

CASE.

C A S E.

June 9, 1762. *J. P.* by his will deviſes to a younger ſon in theſe words, *viz.*

" *Item*, I give to my ſon *T. P.* all that part of the eſtate which " I bought of my brother in law *W. P.* and likewiſe a piece of " ground called by the name of *Golden's Lays* which I bought of " one *J. G.* And likewiſe I give my ſon *T. P. two acres* of land " lying in a field called *Penyland* bought of *J. N.* And I alſo " give my ſon *T. P.* the houſe and orchard, and three acres of " land going into the orchard being lands which I bought of " *N. S.*"

The teſtator alſo deviſes to his eldeſt ſon, as follows:

" *Item.* I give to my ſon *J. P.* all the other part of the eſtate at " *Greet*, as I got by law as the award will plainly. ſet " forth."

Note. All the premiſes are freehold.

Query, What eſtate and intereſt does *T. P.* the younger and *J. P.* the elder ſon and heir reſpectively take under the above deviſes or otherwiſe?

Opinion. I am of opinion the above will is not duly atteſted ſo as to paſs freehold eſtates, and that the eldeſt ſon *J. P.* takes the whole freehold as the eldeſt ſon and heir of his father.

June 26, 1767. *Inner Temple.* *Tho. Warren.*

Mr. *Collet's* opinion on the foregoing caſe.

Opinion. By the above mentioned deviſe to *T.* the younger ſon, if there were not other words in the will to ſhew the intention of the teſtator, I think he would only be entitled to an eſtate for life, in the premiſes deviſed to him, but as by the will (the probate of which is laid before me, with the above caſe), four ſeveral legacies of 100 *l.* each are equally charged on the eſtates, deviſed to *T.* and *J.* to be paid within a year after the teſtator's death, or when the legatees ſhould attain the age of *twenty-two years*, it appears clearly to be the teſtator's intention to give to each of his ſons an eſtate in *fee* in the premiſes deviſed to him; and it has been often determined, that where lands are deviſed to a perſon charged with the payment

of a ſum of money in groſs, to be paid at all events at a certain time, which is the above caſe, a *fee* is deviſed, without any other words to paſs the inheritance, and more eſpecially when the profits of the lands would not, by the time the legacies thereon charged are payable, amount to ſufficient ſum to diſcharge them, for without the *fee* was in ſuch caſe to paſs, it might happen that the deviſee, inſtead of gaining by the deviſe, might be a loſer, and not reap any benefit, which could never be the teſtator's intention; and wherever the intent of the teſtator can be apparently collected from the will, it will ſupply the want of thoſe words which are neceſſary in deeds to convey an inheritance.

Tewkeſbury. Dec. 1, 1767. *H. Collet.*

Mr. *Madock's* opinion on the foregoing caſe.

Opinion. Upon reading a copy of the will at large, I am of opinion that both *T.* and *J.* take an eſtate in *fee ſimple* in the ſeveral eſtates devolved to them reſpectively by the will. The words at the cloſe of the will *viz.* (each perſon paying his equal ſhare of all legacies, and debts, *&c.*) are deciſive of the doubt in the former part of the will, and clearly give each of them an eſtate in *fee ſimple.*

Dec. 22, 1767. *Lincoln's Inn.* *John Madocks.*

C A S E.

May 17, 1666. *J. H.* by indenture of this date demiſed and granted unto *R. D.* a meſſuage and lands, in ———, *To hold* to him, his executors, adminiſtrators and aſſigns, from the date thereof for the *term of* 200 *years*, under the rent of a pepper corn, the remainder of which term is by divers *meſne* acts and aſſignments in the law, *veſted in W. W.* in truſt for *R. T.* for ſo many years of the reſidue thereof as ſhall run out in his life time, and after his deceaſe *for J. his wife* for ſo many years as ſhall run out in her life time; and after their ſeveral deceaſes *in truſt* for ſuch perſon or perſons and for ſuch term or terms, or for ſo much of the ſaid term, and in ſuch ſort, manner and form as the ſaid *T.* and his wife by deed or inſtrument in writing, executed in the preſence of and atteſted by two or more credible witneſſes, ſhould limit, direct, or appoint. And in default of ſuch appointment, upon other truſts therein mentioned.

Theſe truſts were created by *T.* ſubſequent to his marriage with his wife, and upon no conſideration.

The reſidue of another term of 2000 years on other lands, *ſubject* to the rent of a pepper corn, is alſo veſted in the ſaid *W. W.* upon the like truſts before mentioned.

A term of 99 years, determinable on three lives, on other lands is alſo veſted in the ſaid *W. W.* upon the like truſts.

The two laſt terms they are entitled to under a will. *T.* and his wife are deſirous to make an abſolute ſale of all the eſtates.

Query, By what method can the wife paſs her eſtate for life, and can it be effectually conveyed to a purchaſer? If not the whole, can any, and what part, and how?

Opinion. I conceive Mr. *T.* and his wife may limit and appoint all the premiſes to a purchaſer for the remainder of the ſeveral terms, and direct Mr. *W.* the truſtee to aſſign the ſame accordingly. After which let *T.* and his wife levy a fine *ſur conceſſit* for a term of 100 years, to ſome third perſon, *in truſt* for the purchaſer, his executors, adminiſtrators, and aſſigns, and thereby the wife's intereſt in the premiſes will be extinguiſhed.

Dec. 24, 1767. *W. Rivet.*

C A S E.

BY an act of parliament of the *ſixth* year of His preſent Majeſty, for raiſing a land tax in *Great Britain* for the ſervice of the year 1769, *It is enacted*, that a ſum of *two millions* and upwards ſhall be raiſed and paid to His Majeſty in *Great Britain*, by ſuch proportions, and in ſuch manner as in the act expreſſed; and that *one million* and upwards, part of the ſaid *two millions*, ſhall be raiſed and paid to His Majeſty, within *one year* from the the 29th day of *March* 1766; and ſhall be aſſeſſed in the ſeveral counties, cities, &c. of *England*, &c. according to the proportions therein; amongſt which the proportion for the city of *Weſtminſter* and liberties thereof; and offices executed in *Weſtminſter-Hall* is 63,092 *l.* 1 *s.* 5 *d.* And towards raiſing the ſaid ſums, perſonal eſtates, (except as in the act) offices of profit, annuities, and penſions are made liable.

And that the full ſum may be compleatly raiſed and paid to His Majeſty's uſe, *It is enacted*, that all and every manors, meſſuages, lands, tenements, &c. ſhall be charged with as much equality and indifference, as is poſſible, by a *pound rate*, towards the ſeveral ſums by the act impoſed, ſo that by the ſaid rates the full ſums to be raiſed, ſhall be compleatly and effectually taxed, aſſeſſed, levied, and collected.

Commiſſioners are appointed for putting the act in execution within and for the ſame counties, cities, &c. reſpectively, who were to meet on or before the 30th day of *April* 1766, and to ſubdivide for the ſervice of each hundred, &c. or other diviſion, as might beſt conduce to His Majeſty's ſervice.

The commiſſioners for *Weſtminſter* and the liberties, and offices executed in *Weſtminſter-Hall*, met on the 30th day of *April* 1766, and ſettled the *quota* to be raiſed in each pariſh, or ſubdiviſion, within their juriſdiction, according to the accuſtomed proportion.

The pariſhes of St. *Martin in the Fields* and *St. Paul Covent Garden*, are two of thoſe within the liberty of *Weſtminſter*, and have each of them a diſtinct proportion of the whole ſum to be raiſed.

The pariſh of St. *Paul Covent Garden*, having been originally a precinct only, in the pariſh of St. *Martin in the Fields*, but ſeparated by act of parliament of the 12th of *Car.* II. is bounded almoſt on all ſides by St. *Martin's*, and there are but few of the boundaries that are formed by the ſtreets, ſo that lines drawn directly from one boundary mark to another, or from and to points, which are acknowledged to be boundaries, will in many places interſect the premiſes in poſſeſſion of one perſon, and in many inſtances will interſect even the houſes themſelves.

In the year 1762, *J. M.* became tenant by leaſe of a meſſuage in *Maiden Lane*, (confeſſedly in the pariſh of St. *Paul Covent Garden*,) together with diverſe back buildings, which adjoined to the houſe, and extended as far as a court in the pariſh of St. *Martin's*, and with which court there was a communication by a back door. Theſe premiſes are deſcribed in his leaſe, as being all in *Covent Garden*, and he pays the yearly rent of 36 *l.* for the whole, and he was rated to the land tax in *Covent Garden*, (as the former tenant has been) at 36 *l.* for the whole, without any claim from St. *Martin's*, and it cannot be diſcovered that any taxes have been taken by St. *Martin's* for any part of theſe premiſes.

About the year 1764, *M.* pulled down all theſe back buildings, and rebuilt them upon a plan much more commodious for his buſineſs of a *cabinet maker*, &c. with the addition of a large auction room over them, but there is not any bed-chamber, and the communication with St. *Martin's* is ſtill preſerved, and theſe new buildings adjoin to his dwelling houſe. Under the dwelling houſe and the new buildings is a vault, for many years paſt uſed as a cyder cellar, the acceſs to which is from *Covent Garden*.

In *Covent Garden* pariſh, it is not the cuſtom to rate perſonal eſtates, but to rate the landed eſtates at the higheſt improved yearly value, and the aſſeſſors of the land tax conſidering the improvement made

ade by *M.* as liable to an increaſe of his rate, they raiſed the aſſeſ-ents upon him in 1765, to 65*l.* a year, to this aſſeſment he ap-ealed in the proper way, upon which appeal the commiſſioners re-uced it to 60*l.*

By this time, the pariſh of St. *Martin*'s began to think of taking dvantage of the improvement made by *M.* alledging that all or the ar greater part of it is in that pariſh, and upon a ſuſpicion, or expec-ation, that he might be liable to too great a proportion of taxes etween the two pariſhes, he refuſed to pay the rate to *Covent Garden* nd ſuffered a diſtreſs to be taken for the rate for 1765, but did not urther conteſt the matter with that pariſh. Towards the *quota* for 1766, he is again rated in *Covent Garden* at 60*l.* and St. *Martin*'s ave now lately rated him at 40*l.*

A line drawn from the extreme boundaries of the pariſhes, will interſect the new buildings, and would leave almoſt the whole of it in St. *Martin*'s; a line drawn from the extent of the adjoining tene-ments, and which continue rated to, and are conſidered as belonging to *Covent Garden*, would interſect the improvements, particularly the auction room, the room under it, and the cyder cellar, leaving about two thirds of the auction room, and room under it, and almoſt the whole of the cellar, in *Covent Garden.*

The plan herewith left, ſhews, as near as may be, the ſituation of the premiſes, about which the diſpute ariſes, together with as much of the adjoining eſtates, as was thought neceſſary to explain the queſtion. The red dotted line is drawn from the extent of the pa-riſhes, as determined by the buildings in the ſtreet, the other red lines ſhew the extent of *Covent Garden*, as the ſame ſeems to be de-termined by the poſſeſſion of the tenants, and *M.*'s premiſes in diſ-pute are diſtinguiſhed by ſhading.

Query, Should theſe back buildings of *M.*'s be rated in *Covent Gar-den*, or St. *Martin*'s, or proportionably between the two, and if proportionably, how is the proportion to be ſettled?

Opinion. There is no doubt in point of law, but Mr. *M.* the occu-pier for ſuch part of the premiſes as lie in *Covent Garden* pa-riſh ſhould be rated to the pariſh of *Covent Garden*, and for the remainder which are in St. *Martin*'s to the pariſh of St. *Martin*, but the difficulty will be to aſcertain with preciſion the boundaries of the two pariſhes, and to proportion the rate, and therefore it will be adviſeable for Mr. *M.* to get the offi-cers of both pariſhes, to agree upon the proportion of the rates to be paid to each; and if that cannot be done, Mr. *M.* muſt appeal againſt both the rates, and then the juſtices of the ſeſſions will aſcertain and ſettle the proportion of rates to be paid to the pariſhes reſpectively.

Another

Another tenant in *Covent Garden* has lately taken an adjoining houſe in St. *Martin's*, to enlarge his ſhop, and having bricked up all approach from St. *Martin's*, has his communication with it only from *Covent Garden*.

Query, Should this tenant be wholly rated to *Covent Garden*, or to each pariſh, as before?

Opinion. I think this blocking up the windows which looked into the pariſh of St. *Martin's* or altering the way into the premiſes which are ſituated in that pariſh, cannot take away or affect the right of the pariſh of St. *Martin's*.

The duties on windows, *&c.* by the 20th of *Geo.* 2. 31ſt of *Geo.* 2. 2d of *Geo.* 3. and 6th of *Geo.* 3. are laid upon every dwelling houſe inhabited.

And by an act of the 21ſt of *Geo.* 2. to explain and amend the act of the 20th. *It is enacted*, that every larder, workhouſe, laundry, bakehouſe, brewhouſe and lodging-room, belonging to, or occupied with any dwelling-houſe, whether the ſame ſhall, or ſhall not be within, or contiguous to or disjoined from the body of ſuch dwelling houſe, ſhall be deemed and taken to be part of ſuch dwelling houſe.

Query, Should this tax be aſſeſſed upon the whole in the poſſeſſion of each inhabitant, including outhouſes and adjoining buildings in another pariſh? or ſhould the diviſion of the pariſhes, make a diviſion of the rates?

Opinion. I think the window tax, as well as the other *parochial* rates, ſhould be apportioned between the two pariſhes according to the reſpective intereſts of each pariſh in the property to be rated; and this ought to be done amicably if it may be, between the two pariſhes, for it is hard upon the occupier that he ſhould be put to expence and the tenant to, and perhaps too rated higher than he ought to be on account of the diſpute between the pariſhes.

Lincoln's-Inn March 7, 1767. *Fl. Norton.*

CASE.

Jan. 8. 1742. MRS. *S. K.* deceaſed by will of her own hand writing, gives ſeveral pecuniary and ſpecific legacies and (among other things) diſpoſes of a *ſilver cup* and *cover*, the *prints* or *pictures* in the *back parlour*, ſome *china*, *books*, and an *inlaid cabinet*, and appoints Dr. *A. Y.* her executor.

By

By the firſt codicil to her will, written and ſigned by her, ſhe gives ſeveral other pecuniary and ſpecific legacies to ſeveral perſons, and all her *medals, gold, ſilver, braſs*, or *copper*, &c. ſhe gives and leaves to the ſaid Dr. *A. T.* and then ſhe directs as follows: *viz.*

" As for all my *ſhells, foſſils, prints, drawings, gems, pebbles, ſpars,*
" *corals, cars, minerals, antique figures, birds*, and *neſts*, (dead I
" mean, for live *dogs, cats, birds*, &c. I leave to *S. P.* my ſer-
" vant, and my dear *Billy*'s ſmall picture by Mr. *Lens*, to
" her alſo), *woods, gums, ſeals, corals* and *cornlines*, of all which
" I hope to have an inventory, to be ſold by auction, and all
" the money ariſing from ſuch ſale to be paid to the treaſurer
" of the infirmary in *James Street Weſtminſter*, adjoining to
" *Cabbage Lane* or *Street*, and by him as my executor, and *R.*
" *N.* apothecary in *Tothill Street* aforeſaid, ſhall approve, to
" be laid our for the benefit of the poor of that houſe, or in
" that houſe, only *twenty pounds* to be given to St. *George's*
" Hoſpital, at *Hide Park*."

At the concluſion of another codicil (which is the *third* to her will), ſhe adds, " This is my laſt will and teſtament, writ with my " own hand on *eight* ſheets of paper, and one ſide of each ſheet per-" fectly blank."

Note, theſe eight ſides contain the will and three codicils.

Nov. 7, 175, By another codicil written and ſigned by her, ſhe gives ſeveral other legacies, and then follows:

" And notwithſtanding what I have ſaid about my curioſities,
" &c. as mentioned above, I hope to diſpoſe of them my-
" ſelf before I die, and therefore I deſire no notice to be
" taken, or uſe made of any thing I have writ about the diſ-
" poſal of them before in my will."

Note. The ſaid *S. K.* died poſſeſſed of a conſiderable collection of *ſhells, foſſils*, &c.

As the word *curioſities* may extend to the *plate, prints, pictures, books* and *inlaid cabinet* mentioned in her *will*, as well as to the *ſhells, foſſils*, &c. mentioned in the firſt *codicil*, and *which ſhe had not diſpoſed of herſelf before ſhe died*, as in the laſt mentioned codicil ſhe mentions ſhe hoped to do, and as ſhe did not diſpoſe of her *ſhells, foſſils*, &c. by her *will*, but by a *codicil* (though by the concluſion of the *third* codicil to her will, ſhe calls the whole, meaning her will and codicils by the terms and deſcription of her laſt will and teſtament), and as the bequeſt is particularly ſpecified by the firſt *codicil*, and only termed *curioſities* by the four *codicil*.

Query,

Query, Whether under theſe circumſtances, the *codicil* dated *Nov.* 2, 175, will amount to a revocation of the bequeſt of her *ſhells, foſſils, &c.* in the firſt *codicil?*

Opinion. I do not think that the word *curioſities* will be conſtrued to relate or allude to the *plate, prints, pictures, books,* and *inlaid cabinet* mentioned in the will, but will rather be conſtrued to relate to the *ſhells, foſſils,* and other *curioſities* mentioned in the firſt *codicil*, for in this *codicil* (which I am apprehenſive will be looked upon to be wrote after the year 1749, becauſe the third figure is a 5, though the *fourth* is wanting), the ſubſequent words are, "I hope to diſpoſe of them myſelf be- "fore I die, and therefore deſire that no uſe may be made of "any thing that I have wrote before in my will," which I think will confine this *codicil* to the *curioſities* mentioned in the firſt *codicil*, becauſe ſhe had wrote particular directions touching the diſpoſal of them; but no ſuch directions touching the diſpoſition of the abovementioned ſpecific legacies of the *plate, prints, &c.* and though ſhe ſays ſhe had given directions touching the diſpoſal of them in the will, and theſe directions were in her firſt *codicil*, yet it is clear to me, that ſhe compriſed her *will*, and all her *codicils* under the word *will*, as ſhe had done before when ſhe writes on her *will* and *codicils*, "This "is my laſt will," in which ſhe includes three *codicils*, and if ſhe referred to theſe *curioſities* directed to be ſold, then the queſtion is, Whether this *codicil* will revoke the firſt *codicil* as to this gift or not, and I think that this is not a clear point, but I am inclined to think that it will be looked upon as a revocation, for though ſhe might intend to change her mind and to diſpoſe of theſe things during her life, and yet did not do it; yet ſhe has ſhewn an intent that her directions concerning them ſhould not be obſerved, having deſired that no notice might be taken, or uſe made of any thing that ſhe had wrote about the diſpoſal of them in her will, ſo that this ſeems to be a revocation of the deviſe to the charity.

Lincoln's-Inn, Jan. 14, 1755. *R. Wilbraham.*

Mr. *Cambell's* opinion on the foregoing caſe.

Opinion. The *will* and *codicils* are ſtrangely expreſſed, but upon the whole I think the bequeſt is revoked.

Feb. 15, 1755. *A. H. Campbell.*

CASE.

C A S E.

ly 11 and 12, 1634. BY Leaſe and releaſe, The releaſe *tripartite*, *Between* *J. H.* Eſq; and *T. Q.* Gent. of the 1ſt rt, *A. E. W. E.* and *W. P.* Eſqrs; of the 2d part, and *J. G.* oman, and *C. F.* Gent. of the 3d part, *purporting* to be a conveyce in *fee* of a meſſuage and lands in *H.* in the pariſh of *P.* the ſaid *C. F.* in truſt for the ſaid *J. G.* and his heirs.

12th and 13th *October*, 1685, By leaſe and releaſe being a mortge in *fee* of the ſaid premiſes from the ſaid *C. F.* and *J. G.* *W. H.* clothier, in the uſual way for ſecuring 400 *l.* and ineſt.

7th *November*, 1696, The ſaid *J. G.* by indenture of this date de between him of the one part, and the ſaid *W. H.* of the other t, he charged the ſaid premiſes with 100 *l.* more, making the ole 500 *l.*

7th and 8th *November*, 1698, By leaſe and releaſe, the releaſe partite, between the ſaid *W. H.* of the 1ſt part, the ſaid *J. G.* the 2d part, and *T. A.* clerk, of the 3d part, being a transfer ſaid *A.* of the above mortgages for ſecuring to him 600 *l.* and ereſt.

7th and 8th *November*, 1720, Leaſe and releaſe, The releaſe *quapartite*, between *J. A.* Eſq; (executor and heir at law of ſaid *A.* and ſaid *J. G.* of the 1ſt part, *R. L.* mercer, of the 2d part, *L.* mercer, of the 3d part, and *J. L.* linen-draper, of the 4th t, being a transfer of the laſt mortgage to *R. L.* for ſecuring to n 700 *l.* and intereſt.

7th and 8th *November*, 1723, By leaſe and releaſe being a transfer the ſame mortgage to *T. L.* for ſecuring to him 700 *l.* and ereſt.

8th and 9th *November*, 1725, By leaſe and releaſe, being a tranſof the ſame mortgage to *J. C. C.* Eſq; for ſecuring to him o *l.* and intereſt.

9th *June*, 1732, The ſaid *J. G.* by his will of this date gave l deviſed as follows:

" I give, deviſe, and bequeath unto my dear and loving wife " *E. G.* all and ſingular my meſſuage or dwelling-houſe,

" cloſes, pieces and parcels of ground, lands, meadows, paſ-
" tures, feedings, and hereditaments, whatſoever, with all
" and ſingular the appurtenances to them, every, any or
" either of them belonging or appertaining, whereof or where-
" in I am now poſſeſſed, intereſted, or entitled unto, ſituate,
" lying, and being, within the Hamlet of *H.* in the pariſh of
" *P.* aforeſaid, *To hold* unto my ſaid wife *E.* and her aſſigns,
" for and during the term of her natural life, without
" impeachment of waſte; ſhe my ſaid wife paying out of the
" rents and profits of the ſaid hereby deviſed meſſuage, lands,
" tenements, hereditaments, and premiſes, all ſuch inte-
" reſt money as at the time of my death ſhall appear to be
" due and owing for the principal ſum wherewith the ſaid
" lands and premiſes now ſtand engaged: And do alſo year-
" ly, during her natural life, from time to time, when and
" as often as ſuch intereſt ſhall become due for the ſaid prin-
" cipal ſum, well and truly pay, ſatisfy, and diſcharge, the
" ſame by the ways and means aforeſaid: And from and after
" the reſpective deceaſes of me and *E.* my ſaid wife, I give,
" deviſe, and bequeath the ſaid meſſuage, lands, tenements,
" and hereditaments, unto my kinſman *W. G.* ſon of my
" late brother *R. G. To hold* to him my ſaid kinſman
" *W. G.* for and during the term of his natural life: And af-
" ter his deceaſe to the heirs male of his body, lawfully be-
" gotten, or to be begotten: And for want or in default of
" ſuch iſſue or heirs of my kinſman *W. G.* I give, deviſe, and
" bequeath the before-mentioned meſſuages, lands, tene-
" ments, and hereditaments, to my niece *E. C.* the wife of
" *S. C.* of *B.* in the county of *S.* Shopkeeper, and to the
" heirs of her body begotten or to be begotten: And for
" want of ſuch iſſue or heirs of her the ſaid *E. C.* I give,
" deviſe, and bequeath the beforementioned lands and tene-
" ments to the right heirs of me the ſaid *J. G.* their heirs and
" aſſigns for ever."

The teſtator after charging his ſaid lands with the payment of legacies, therein ſpecified, and his bond debts, his further will was: That in caſe the perſon or perſons to whom the ſaid lands and tenements ſtood charged, ſhould be willing to call in the money due, that all and every perſon and perſons, who by virtue of his ſaid will ſhould or might claim or pretend to claim any eſtate or intereſt therein or thereto, as aforeſaid, ſhould join in any deed or deeds, and do any act or acts as council ſhould adviſe, or elſe he or they refuſing, ſhould be wholly excluded from having or receiving any benefit or advantage by his ſaid will. And he made the ſaid *E. G.* his wife, ſole executrix and reſiduary legatee.

The ſaid will was duly executed and atteſted.

9th

9th and 10th *October*, 1754, By indentures of leaſe and releaſe *quadrupartite* and made between ſaid *J. C. C.* of the 1ſt part, ſaid *E. G.* of the 2d part, *H. D.* Eſq; of the 3d part, and the hon. *C. B. T. B. T. P. T. C. G. S. F. N. C. H. M. L. W. P. E. B. J. H. C. E. P.* and *E. P.* Eſqrs; the then truſtees and viſitors of the hoſpital of *H. S.* Eſq; ſituate in *B.* in the county of *S.* of the 4th part, *reciting, amongſt other things*, that there was then due to the ſaid *J. C. C.* for principal and intereſt, on mortgage and bonds, the ſum of 960 *l.* purporting to be a transfer of the ſaid *C.*'s mortgage to the ſaid *H. D. In truſt* for the ſaid truſtees and viſitors.

The ſaid *E. G.* is ſince dead, and the ſaid *W. G.* tenant in tail, after her death, by indentures of leaſe and releaſe bearing date reſpectively, the 17th and 18th *July*, 1755, The releaſe *tripartite*, and made *between* the ſaid *W. G.* of the 1ſt part, *G. G.* Gent. of the 2d part, and *G. L.* Gent. of the 3d part. For the conſiderations therein mentioned the ſaid *W. G.* granted and releaſed to the ſaid *G. G.* and his heirs the ſaid premiſes, *To hold* to and to the uſe of the ſaid *G. G.* his heirs and aſſigns, for making him tenant to a precipe for ſuffering a recovery of the then next *Hilary term*, which recovery was thereby declared *to be and enure* to the only proper uſe and behoof of the ſaid *W. G.* his heirs and aſſigns for ever.

The ſaid recovery was ſuffered in the ſaid *Hilary term* and the ſaid *W. G.* was vouchee therein.

Query, If the limitations above ſtated are not effectually barred, and an eſtate in *fee-ſimple*, *ſubject* to the mortgage debt, veſted in the ſaid *W. G.* notwithſtanding the mortgagee did not concur in making the tenant to the precipe?

Opinion. The eſtates created by the will of *J. G.* were all equitable eſtates in their creation, and I am of opinion the recovery was well ſuffered, and that *W. G.* is well ſeiſed of the inheritance in *fee-ſimple*, *ſubject* to the mortgage to *H. D.* in truſt, *&c.*

Nov. 25, 1767. *Wm. Rivet.*

C A S E.

IN the year 1719 ſeveral well diſpoſed gentlemen formed themſelves into a ſociety in *Weſtminſter* for the relief of neceſſitous ſick and wounded from all parts, and by voluntary ſubſcriptions and benefactions were enabled to hire a proper houſe, and to defray the expence of maintaining and providing medicines for many poor ſick people

recommended to them; and for many years paſt have not had leſs than between 200 and 300 poor conſtantly under their care, either as in-patients or out-patients; which ſociety, from the time of its being firſt formed has been called by the name or title of the *Public Infirmary* in *Weſtminſter*, and many legacies have been bequeathed to the ſociety, under that title, and received by the treaſurer appointed or choſen by the ſubſcribers.

Mrs. *E. S.* by her will, dated 4th *May*, 1733, and codicils thereto, makes the following bequeſts: *viz.*

> "I give towards the ſupport of the infirmary 500 *l.* I give to "the infirmary in *Weſtminſter* the ſum of 200 *l.* And I give "300 *l.* more to the uſe of any incurables, if there ſhall be "any ward erected or built for ſuch charity in three years af-"ter my death." And appointed Mrs. *E. N.* her Executrix.

Mrs. *S.* died ſoon after, and Mrs. *N.* proved her will, and in *Auguſt*, 1735 paid to the treaſurer of the infirmary the above legacies of 500 *l.* and 200 *l.* and in *January*, 1737, paid the legacy of 300 *l.* given for the uſe of incurables, (a proper houſe or apartment having, ſome years before that time, been erected into a ward for incurables, and ſeveral patients been admitted therein.

Ever ſince the eſtabliſhment of the fund for the ſaid charity, which was the 20th of *November*, 1734, that fund, and the fund for curables, have been looked on as diſtinct charities; diſtinct books and accounts having been always kept for the different charities.

The ſaid *E. N.* by her will dated the 15th of *February*, 1734, makes a bequeſt in the following words.

> "To all the public charities to which dear Mrs. *S.* gave any le-"gacy or legacies by her will, I do hereby give to every one "of them the further ſum of 100 *l.* a-piece."

And appointed Mr. *P.* her Executor.

The ſaid *E. N.* died about *Auguſt*, 1738, and Mr. *P.* proved her will, and in *Auguſt*, 1739, paid to the treaſurer the 100 *l.* legacy for the curables, and ſince thepayment thereof, doubts have ariſen whether under the words *public charity* the infirmary is intitled to the legacy paid them, and to the further ſum of 100 *l.* for the incurables, and has declined paying the laſt mentioned legacy, and apprehends he could not with ſafety pay either without the direction of the *court of chancery*.

Query, Whether the above mentioned charities for curables and incurables will not be conſidered as two diſtinct charities, and, as ſuch, intitled to the legacy of 100 *l.* a-piece, under the will of Mrs. *N.* and may the executor ſafely pay the ſame without the directions of the court of *chancery*; if not, and an information in the name of the Attorney General at the relation of the perſons intereſted in the ſeveral charities mentioned in Mrs. *S.*'s will, (for there are ſeveral others of the like nature, to which Mrs. *S.* bequeathed legacies) ſhould be brought againſt the executor, will the court decree coſts out of the ſeveral legacies, or out of Mrs. *N.*'s eſtate; there being aſſets, as is apprehended, ſufficient to pay the debts and ſpecifick legacies, with a conſiderable overplus?

Opinion. I conceive, the charities of the curables and incurables are to be conſidered as diſtinct and public charities within the intent of Mrs. *N.*'s will, and intitled each to 100 *l.* In caſe an information ſhould be brought in the name of the Attorney General againſt the executors of Mrs. *N.* for payment of thoſe charitable bequeſts, the coſts will probably be ordered, not out of the legacies, but out of the effects of Mrs. *N.* I think the executor may ſafely pay both theſe legacies without the decree of a court of equity.

J. B. Eſq; by his will, dated 26 *July* 1736, bequeaths:

"To the truſtees of the infirmary belonging to *St. Margaret's* "pariſh, *Weſtminſter*, 200 *l. one hundred pounds*, a part there- "of, to be diſpoſed of for medicines and linen for the houſe, "and 100 *l.* the reſidue thereof, to buy cloaths for ſuchpoor "objects as ſhall be cured in the infirmary, to be given to "them at the the time of their quitting the ſame." And *ſubjects* his Manor of *H.* together with his capital meſſuage and lands thereto belonging, and his perſonal eſtate, with the payment of his debts and legacies, and appoints *J. H. R. P. H. J. R.* and *B. T.* his executors, and ſoon after died.

Mr. *H.* and Mr. *H.* have ſince proved the will, but refuſe paying the above mentioned legacy.

Query, Whether the public infirmary is not intitled to the ſaid legacy; and may not the executors ſafely pay the ſame without the directions of the court of *chancery*: and if they refuſe, will it not be adviſeable to file an information againſt them in the name of the Attorney General, at the relation of the truſtees of the infirmary, to compel the executors to pay the ſame?

Opinion.

Opinion. I am of opinion, the infirmary is intitled to this legacy of 200 *l.* out of the perſonal eſtate, in caſe that is ſufficient, but not out of the real; and the executors may ſafely pay it without the direction of the court of *chancery*. If they refuſe, it will be proper to file an information in the name of the Attorney General againſt them, at the relation of ſome of the truſtees

Auguſt 4th, 1740. *D. Ryder.*

Since ſtating the foregoing caſe, it appears that Mr. *B.* by his will deviſes to truſtees, and their heirs, his manor of *H.* and the lands thereto belonging, *In truſt* to ſell the freehold and inheritance thereof; and till ſale, directs, that the rents and profits of his lands, and all his goods, chattels, and perſonal eſtate, except what is ſpecifically deviſed by his will, ſhall be applied in payment of his debts, funeral charges, and legacies: And further directs his ſaid truſtees, out of the money ariſing from ſuch ſale, and out of his perſonal eſtate, to pay ſeveral pecuniary legacies to his friends and relations, and, among thoſe ſeveral bequeſts, makes the aforegoing to the infirmary, and appoints his ſaid truſtees his executors.

Quere, Whether, as the real eſtate is directed to be ſold for payment of his debts and legacies, the aforeſaid charitable bequeſt will not be good, notwithſtanding the *ſtatute of mortmain*, ſuppoſing the perſonal eſtate ſhould not be ſufficient: Whether, if the perſonal eſtate ſhould not be ſufficient to pay all his pecuniary legacies the executors may not be compelled to pay this legacy out of the perſonal eſtate (not ſpecifically bequeathed) preferrably to the legacies to his friends and relations, which may be a good charge on the real eſtate: And, if the executors are not compellable to pay this legacy, in preference to thoſe of his friends and relations, whether the infirmary will not be intitled to a ſhare of their legacy proportionably with the other legatees, as far as the perſonal eſtate (not ſpecifically bequeathed) will extend?

Opinion. I conceive a court of equity will ſo marſhal the aſſets, that, as there is ſufficient real eſtate to pay all the other bequeſts and legacies, this particular legacy ſhall be wholly paid out of the perſonal eſtate, in order that the whole will may be performed according to law.

Auguſt 4th. 1740. *D. Ryder.*

It appears by the executors of Mr. *B.* that he did not leave any perſonal eſtate, but what he ſpecifically bequeathed by his will, in which caſe—

Quere,

Quere, Will his real eſtate (as he directed that ſhould be ſold for payment of his debts and legacies) be liable to the aforegoing charitable bequeſt?

Opinion. The deviſe for the benefit of the charity, ſo far as it is intended to affect the real eſtate, is void by *ſtat.* 9 *Geo.* 2. and as there is no perſonal eſtate liable to it, I dont, ſee how it can be paid at all; and I am of opinion the real eſtate is not liable to it.

November 20, 1740. *D. Ryder.*

C A S E.

20th *Auguſt*, 1762. S. *H.* by her will of that date, duly executed and atteſted, gave and deviſed unto *T. M.* and *E. L.* ALL her meſſuages, lands, tenements, and hereditaments whatſoever; with all and every the rights, members, and appurtenances thereunto belonging; ſituate, lying, and being, within the pariſh of *N. C.* or elſewhere, as well leaſehold as freehold, whereof or where ſhe was or ſhould be ſeiſed, poſſeſſed, or any ways entitled unto either in poſſeſſion or reverſion, and whereof ſhe had power to diſpoſe, together with all the rents, iſſues, and profits thereof; *To hold* the ſaid meſſuages, lands, tenements, and hereditaments, with the rents, iſſues, and profits thereof, unto the ſaid *T. M.* and *E. H.* their heirs, executors, adminiſtrators, and aſſigns, *In truſt*; nevertheleſs, that they the ſaid truſtees and the ſurvivor of them, his heirs, executors, and adminiſtrators, from time to time, ſhould pay over and apply the rents, iſſues, and profits of all and ſingular the ſaid meſſuages, lands, tenements, hereditaments, and premiſes, unto her daughter *E.* then the wife of *G. H.* ſince deceaſed, during the term of her natural life, for her ſeperate uſe and diſpoſal: And from, and after her deceaſe, the teſtatrix gave and deviſed the ſaid meſſuages, lands, tenements, hereditaments, and premiſes, with the apurtenances, unto her grandſon *R. H.* now about 16 years of age, only ſon of the ſaid *G.* and *E. H.* for and during the term of his natural life, and from and after the determination of that eſtate, ſhe gave and deviſed the ſaid premiſes with the appurtenances unto the ſaid *M.* and *H.* and their heirs, during the term of the natural life of the ſaid *R. H.* *In truſt*, to preſerve the contingent eſtates, *&c.* And from and after the deceaſe of the ſaid *R. H.* ſhe gave and deviſed the ſaid premiſes with the appurtenances to his firſt and other ſons in tail general: And in default of ſuch iſſue, to all and every his daughter and daughters in tail general, as tenants in common: And in default of ſuch iſſue, ſhe gave and deviſed the ſaid premiſes with the appurtenances to her own right heirs for ever. And the reſidue of her eſtates, money, ſecurities, goods, and chattels, ſhe gave and bequeathed to ſaid *M.* and

and *H.* their executors, *&c.* with full power for them or the ſurvivor, his executors, *&c.* to place the ſame at intereſt on real or other ſecurities, the intereſt and proceed thereof was to be applied and paid to her ſaid daughter *E. H.* for her life, for her ſeparate uſe and diſpoſal: And from and after her deceaſe, the teſtatrix gave the reſidue of her ſaid eſtates, monies, *&c.* unto her ſecond grandſon *R. H.* his executors, and adminiſtrators, and nominated the ſaid *M.* and *H.* executors *on the truſt*, and for the purpoſes aforeſaid.

At the death of the ſaid *E. H.* the ſaid *G. H.* her huſband, as father and natural guardian for the ſaid *R. H.* poſſeſſed himſelf of the ſaid eſtates, but unhappily for the child he has not acted as ſuch. He has cut down and ſold quantities of timber, ſpent the money, and dug up *five* or *ſix* acres of the meadow, for the advancing the preſent income, which after a few years will be greatly reduced within the former rent, ſuffered the buildings to decay for want of repair, and the whole of the eſtate to run to ruin: But this unnatural behaviour extends ſtill further, he has totally neglected his education, having never kept him at ſchool more than one year and a half, which was ſome time ago; and ſince this he has been at home with his father, under the management of a whore he keeps in his houſe of the moſt abandoned kind, both in converſation and indecent behaviour. This wench behaving very ill to him, and not allowing him neceſſaries, about half a year ago he left his father's houſe and went to his uncle the ſaid *E. H.* his mother's ſiſter's huſband, having no nearer relation, who received and cloathed him, as he was quite ragged, and has maintained him and kept him at ſchool ever ſince.

The boy being deſirous that his uncle *H.* ſhould have the care of his perſon and eſtates, and Mr. *H.* being inclined to ſerve him, if he can be indemnified againſt the coſt of the appointment;

Quere, Whether the father can by any, and what method, be removed from the guardianſhip of his child and the poſſeſſion of the eſtates, and Mr. *H.* appointed for him; and by whom muſt the expence be defrayed; whether out of the chattels in Mr. *H.*'s hands, or out of the rents and proceed of the eſtates and chattels; or will the ſame be a lien or charge on the freehold and leaſehold eſtate; if not, or not payable out of the principal money, but only out of the rents and intereſt, ſhould the minor die before it be ſatisfied, can it then be obtained? If the application ſhould not be attended with ſucceſs, can Mr. *H.* applying at the boy's inſtance, obtain the coſt of attempting to procure the appointment?

The perſonal eſtate, now in Mr. *H.*'s hands, amounts to about 300 *l.*

Opinion. The poſſeſſion and management of the eſtates may be taken from the father, by filing a bill in equity in the name of R. *H.*

R. H. the infant, by his next friend his uncle may nominate, and which bill ſhould be brought againſt the father, and Mr. *M.* and Mr. *H.* the truſtees and executors named in the will of the teſtatrix. And it ſhould be thereby prayed, that the father may account for the rents and profits of the eſtates received by him, and the money raiſed by timber, and may pay what ſhall become due from him into the Bank, to be placed out in the Accomptant General's name for the benefit of the infant; and that a receiver may be appointed of the freehold and leaſehold eſtates, with the uſual powers to let and ſet the ſame. And as againſt Mr. *M.* and Mr. *H.* praying to have the accounts of the perſonal eſtates taken, and the ſame placed out for the infant's benefit; and that a proper allowance may be made for his maintenance and education for the time paſt ſince he left his father's, and for the time to come until he ſhall attain his age of 21 years. If ſuch bill is filed Mr. *H.* may propoſe himſelf a receiver; and I think the maſter would appoint him, as I can ſee no objection that can be made to him; and I think an allowance would be made for the infant's maintenance and education, and directed to be paid to ſuch perſon as has or ſhall maintain him; and that Mr. *H.*'s coſts, and all the other plaintiffs to the ſuit, except the father's, would be directed to be paid out of the infant's eſtate; ſuch as relate to the real eſtate out of thoſe eſtate, and ſuch as relate to the perſonal eſtate out of the perſonal. And, as I conceive, Mr. *H.* can run no riſques in caſe the infant ſhould die before he attains 21; as he would have a right (as I apprehend) to retain the coſts of ſuch ſuit out of the truſt eſtate in his hands.

an. 1ſt. 1761. *R. Perrin.*

C A S E.

ber 19 *and* 20, 1710. INDENTURES of leaſe and releaſe, *tripartite*, between *T. F.* maltſter of the 1ſt part, *J. T. D.* yeoman, and *G. F.* mercer of the 2d part, and *M. T. alias* ſpinſter, of the 3d part. The ſaid *T. F.* in conſideration of a riage then intended to be had and ſolemnized between the ſaid F. and the ſaid *M. T. alias D.* and of a competent marriage por- by him with her received; and alſo 5*s.* to him paid by the ſaid T. *alias D.* and *G. F. Did* grant and releaſe unto the ſaid *J. T. D.* and *G. F.* and to their heirs,

meſſuage, tenement, and dwelling-houſe, with the gardens, or- ds, and backſides thereunto belonging, with the appurtenances, in

To hold to the ſaid truſtees their heirs and aſſigns, *to* the only proper uſe and behoof of the ſaid truſtees, their heirs and aſſigns for ever, on the following truſts:

To the uſe and behoof of the ſaid *T. F.* for life, without impeachment of waſte; then,

To the uſe and behoof of the ſaid *M. T.* alias *D.* for her life; then,

To the uſe and behoof of the heirs of the body of the ſaid *T. F.* on the body of the ſaid *M.* his ſaid then intended wife, lawfully to be begotten; *remainder*,

To the only proper uſe of the heirs and aſſigns of the ſaid *T. F.* for ever.

The marriage took effect; and the ſettler leaving iſſue of the marriage *H. T.* the eldeſt ſon, and other children,

The ſaid *T. F.* by his will dated the 31ſt *Auguſt* 1742, gave to his wife *M.* his houſe and backſide at *Stoke*, with all the premiſes thereunto belonging, and likewiſe all his leaſehold eſtate whatſoever, *To hold* the ſame during her natural life, or ſo long *as ſhe ſhould keep herſelf unmarried*; and after her death or intermarriage, which ſhould firſt happen, he gave unto his ſon *H.* his houſe and backſide at *Stoke* with all the premiſes thereunto belonging, to him and his heirs for ever; and alſo a ſmall cloſe of leaſehold lying at *Stoke*, called *Lydford Cloſe*; and the reſt of his leaſehold eſtates he gave to his ſon *T.*

N. B. The ſaid *T. F.* the teſtator, had no other freehold eſtate in *Stoke*, than the meſſuage and premiſes compriſed in the above ſettlement.

The ſaid *M.* wife of the ſettler is dead, but ſurvived the ſaid *H. F.* the firſt ſon of the ſaid marriage, who by his will dated the 9th of *March* 1763, Gave and deviſed unto his brother *T. F.* and to his brother in law *W. H.* All his meſſuages, lands, tenements, and real eſtate whatſoever, ſituate, lying, and being in the pariſh of *Stoke* aforeſaid, and *Wincaſton* in the county aforeſaid, or elſewhere, whereof he was ſeiſed, poſſeſſed, or any ways intitled unto, in poſſeſſion, reverſion, remainder, or expectancy, with their and every of their rights, members, and appurtenances; *To hold* to the ſaid *T. F.* and *W. H.* and their heirs, *In truſt*, that they, and the ſurvivor and his heirs, ſhould and did, by and out of the rents, iſſues and profits of all and ſingular the ſaid freehold eſtate, lands and premiſes, receive and take 5*s.* by the week, and pay the ſame over, without any

deduction whatſoever, unto and to the ſeparate uſe of the teſtator's daughter *E.* wife of *R. S.* during her natural life. And after the receipt and payment thereof, did and ſhould permit and ſuffer the teſtator's wife *M.* to receive and take the reſidue of the rents, iſſues, and profits of all and ſingular his ſaid freehold eſtates, lands, and premiſes for and during the term of her natural life. And from and after the deceaſe of his ſaid wife, the teſtator's will was, and he did thereby give and deviſe all and ſingular his freehold meſſuages, lands, tenements, hereditaments and real eſtate, whatſoever and wherever, unto his nephew *H. F.* ſon of his ſaid brother *H. F.* *to hold* to his heirs and aſſigns for ever, ſubject to the ſaid annuity of *five ſhillings* a week as aforeſaid.

The ſaid *H. F.* the teſtator, died ſeiſed of other freehold lands in *Stoke* aforeſaid, of a conſiderable value, and left iſſue only the ſaid *E. S.*

No Fine was levied either by *T. F.* the ſettler, or the ſaid *H. F.* his ſon.

Query, As the ſettlement is penned, had not *T. F.* the ſettler an immediate eſtate tail, or an eſtate tail in remainder in the premiſes under the ſettlement; and, as the legal eſtate is veſted in the truſtees named in the ſettlement, Could he, or could he not, bar the eſtate tail by his will; and did he ſufficiently paſs the equitable intereſt in fee ſimple, ſubject to the eſtate for life of *M.* the wife of the ſettler, ſo as to give his ſon *H.* the deviſor a diſpoſing right of it by his will?

If *T. F.* the ſettler had no ſuch power; Had the ſaid *H. T.* the ſon, as tenant in tail, a right to diſpoſe of the equitable intereſt in fee by his will, ſubject to his mother's eſtate for life, if ſhe ſurvived him; or could he not bar it without fine, whether he ſurvived the mother or not, and whether he had or had not a fee ſimple eſtate in *Stoke*, beſide the freehold meſſuage; and in either caſe, Can Mrs. *F.* the widow and deviſee of the ſaid *H. F.* claim an eſtate for her life under his will, or to what other intereſt is ſhe intitled, and how muſt ſhe proceed to obtain it; or to whom do the ſettled premiſes belong?

Opinion. Neither father nor ſon levied a fine; therefore the ſettled premiſes, (notwithſtanding the remainder in tail veſted in the father, liable to be barred during his life) deſcended to *H.* the ſon, as heir of his father's body begotten on *M.* and from him they are deſcended to *E. S.* his only daughter. *H.*'s widow is not intitled to dower out of the lands intailed, becauſe he was never actually ſeiſed during his marriage, as his mother ſurvived him. *T.* the brother, and *H.* the ne-

phew, alſo cannot claim them, unleſs *E. S.* ſhall die without iſſue of her body, and without ſuffering a recovery to bar the limitation of the eſtate tail in the ſettlement, and the reverſion in fee expectant upon it. Truſts and legal eſtates are ſubject to the ſame rules and modes of conveyancing; and therefore the circumſtance of truſt, or not, is immaterial in the preſent caſe. All the unſettled lands of *H.* paſs by his will, ſubject to the weekly payment directed, and to the widow's eſtate for life. The principal doubt in this caſe is, whether *E. S.* muſt not elect either to take the lands entailed under the deed of 1710, and renounce the annuity payable at the rate of 5*s* per week, or elſe accept the annuity under the will, and renounce the entail. It appears to me, that the teſtator meant to build his ſettled as well as unſettled eſtates, he having deviſed all his freehold, *&c.* whereof he was ſeized, poſſeſt, or which he was any way entitled to, *&c.* Theſe words are comprehenſive to include the lands ſettled.

Auguſt 12th, 1767. *C. Yorke.*

C A S E.

3d *July*, 1748. BY ſettlement on the marriage of *J. J.* Eſq; with lady *A. M.*

Reciting, that it had been agreed that 2000 *l.* part of Lady *A's* portion ſhould be paid into the hands of Lord *N.* and *G.* (now Earl of *G.*) and *H. A.* Eſq; upon the truſts after declared; and in purſuance of ſuch agreement Lady *A. J.* had aſſigned to the truſtees divers lands in *Ireland*, which had been demiſed to her for 99 years, for ſecuring 1000 *l.* and intereſt, *Upon truſt*, to receive the money and apply the ſame *upon the truſts* after mentioned; *and reciting*, that Lady *A.* had transferred to the ſame truſtees 1000 *l.* bank annuities of 1748.

In conſideration of the marriage, *&c.* the manor of *Dallington*, and other the eſtates of the ſaid *J. J.* are conveyed to Lord *N.* and *G.* and Mr. *A.* their heirs and aſſigns.

To the uſe of Mr. *J.* his heirs and aſſigns, till the marriage; and from the ſolemnization thereof,

To Sir *D. O.* his executors, *&c.* for 99 years, (this term was for raiſing 150 *l. per annum* for Lady *A's.* ſeparate uſe during coverture) and for the expiration and determination of the ſaid term.

To

To Mr. *J.* for life, *ſans* waſte.

Remainder to the truſtees, to ſupport the contingent remainders.

After Mr. *J.*'s death, to the uſe and intent that Lady *A.* might receive a rent charge of 600 *l. per annum.*

To the uſe of *J. L.* Eſq; for 200 years from Mr. *J.*'s death. (This term was for ſecuring the rent charge, with power to demiſe, *&c.)*

Remainder to the ſaid Lord *N.* and *G.* and Mr. *A.* their executors, *&c.* for 500 years.

The truſts of this term, and on which the queſtion ariſes, are ſtated at large herein after.

Remainder to the firſt ſon of the marriage in tail male.

Remainder to the ſecond, third, and fourth ſons, *&c* in tail male;

Remainder to Mr. *J.* in fee.

The ſaid term of 500 years was ſo limited to the truſtees upon truſt, that in caſe the ſaid *J. J.* ſhould have iſſue of the ſaid marriage a ſon, and alſo any other child or children beſide an eldeſt or only ſon, be they ſon or ſons, daughter or daughters; that then the ſaid truſtees ſhould, after the ſaid *J. J.*'s deceaſe, without prejudice to the ſaid yearly rent charge limited to the ſaid lady *A.* by ſale or mortgage of all or any part of the ſaid premiſes, or by the rents and profits thereof, or otherwiſe raiſe 2000 *l.* towards the portion or portions of ſuch your child or children, to be paid in caſe there ſhould be but one ſuch child the whole 2000 *l.* And in caſe there ſhould be two or more ſuch children, then the ſaid 2000 *l.* to be equally divided amongſt them, the ſame to be an intereſt veſted in ſuch of the children as ſhall be a ſon or ſons at their age of 21 years; and in ſuch of the ſaid children as ſhall be a daughter or daughters at their age of 18, or marriage, but to be paid as herein after mentioned, *viz.* the portion of your ſons to be paid to ſuch of them as ſhall be under the age of 21, at the death of ſaid *J. J.* when they ſhall reſpectively attain the age of 21, and to ſuch as ſhall attain the age of 21 in the life time of the ſaid *J. J.* at the end of ſix calendar months next after his deceaſe, with intereſt from the time of his death at 4 *l. per cent.* And the portions of ſuch daughters to be paid to ſuch of them as ſhall be under the age of 18, and unmarried at the time of the death of the ſaid *J. J.* at their ages of 18 or marriage; and to ſuch of them as ſhall attain the age of 18, or be married in the life time of the ſaid *J. J.* at the end of ſix calendar months next after his deceaſe, with intereſt from the time of his death at the rate before mentioned.

Provided if any ſuch your other children as ſhall die before their portions or ſhares in the ſaid 2000 *l.* ſhall become veſted as aforeſaid, or any ſuch your ſon ſhall become an eldeſt or only ſon, then the ſhares of him or them ſo dying or becoming an eldeſt or only ſon, ſhall be paid to the ſurvivors, ſhare and ſhare alike, and become veſted when and as their original portions ſhall veſt and become payable as aforeſaid.

And upon further truſt, that if there ſhall not be any ſon or ſons of ſaid marriage, or if there ſhall be any ſuch ſon or ſons, and all and every the ſame ſon or ſons, ſhall die without iſſue male before 21, and in either of the ſaid caſes there ſhall be one or more daughters; then the ſaid truſtees ſhould, after the deceaſe of ſaid *J. J.* but without prejudice to the jointure of ſaid lady *A.* levy 2000 *l.* towards the portions of ſuch daughter or daughters, to be paid in manner following, *viz.* If but one daughter, the whole 2000 *l.* towards the portion of ſuch only daughter; if two or more ſuch daughters, then the ſaid 2000 *l.* to be equally divided between them; the ſaid portions to belong to, and be an intereſt veſted in ſuch daughter or daughters, at their reſpective ages of 18 years, or days of marriage, unleſs the ſame ſhall happen in the ſaid *J. J.*'s life time; then and in ſuch caſe, at the end of ſix calandar months next after his deceaſe, with intereſt from the time of his death, at 4 *l. per cent.* for maintenance of ſuch daughter and daughters, till the portions ſhall become payable.

Provided if any ſuch daughter ſhall happen to die before her ſhare of ſaid 2000 *l.* ſhall become veſted, then ſuch ſhare ſhall be paid to the ſurvivor or ſurvivors, when and as their original portions or ſhares ſhall become papable.

Provided that if any ſuch daughter ſhall receive any portion provided for her as one of the younger children, and afterwards be entitled to a portion as provided for her on failure of iſſue male, that then ſuch daughter as ſhall have received ſuch portion as a younger child, ſhall upon failure of iſſue male receive only ſo much further portion as with the portion already received as one of the younger children, ſhall make up the portion intended for her, in caſe of failure of iſſue male, and no more.

Provided that no ſale or mortgage ſhall be made of ſaid term of 500 years, for raiſing ſaid portions for ſuch younger ſon or ſons, or any ſuch daughter or daughters, till ſome or one of the ſaid portions become payable.

And alſo that the reſidue of the rents of ſaid premiſes, over and above what will pay the yearly intereſt before appointed to be raiſed for the maintenance of ſuch younger ſons and daughters, and the *coſt of raiſing* the ſame, ſhall and may, till ſome or one of the ſaid portions

portions become payable, be received by ſuch perſons as ſhall be entitled to the immediate remainder or reverſion of the ſaid premiſes, expectant on the determination of ſaid term of 500 years.

Provided that if there ſhall not be any ſuch younger ſon or ſons, or daughter or daughters, who ſhall live to be entitled to any ſuch portion as aforeſaid, or in caſe all the ſaid portions and intereſt or maintenance money appointed to be raiſed ſhall be raiſed, then and in either of the the ſaid caſes (the truſtees charges being paid) the ſaid term to be void.

The marriage took effect; and the ſaid Mr. *J.* died *November* 1752, leaving only one child, a daughter, now of the age of 17, having given all his perſonal eſtate to Lady *A. J.* his widow, without making any diſpoſition of his real eſtates, whereby Miſs *J.* the daughter, as heir at law of her father, became ſeized of the ſettled eſtates, *ſubject* to the ſeveral terms, and Lady *A. J.* is alſo dead, all arrears of her rent charge being paid, or provided for. Miſs *J.* was maintained and educated by her mother, out of the profits of the real eſtate.

A treaty of marriage is on foot for Miſs *J.* and as ſhe is under age, no ſettlement can be made of her real eſtate.

Query, Is this charge of 2000 *l.* extinguiſhed by Miſs *J.*'s taking the ſettled eſtates as heir to her father, or does it remain a charge? Can it be ſecured to the intended huſband by any act of the truſtees; or in caſe of Miſs *J.*'s death under age, and before any diſpoſition can be made of her real eſtate, will it remain a charge to which the intended huſband of Miſs *J.* will be entitled? By what means can it be recovered; and from what time will it carry intereſt?

Opinion. Mergers of eſtates are not favoured much in equity; and I am of opinion, that this ſum of 2000 *l.* was ſecured by a term of years; that the deſcent of the legal intereſt upon her of the fee of the reverſion, will not extinguiſh the equitable right that Miſs *J.* had in this ſum, by virtue of the truſt term of 500 years veſted in the truſtees; for this was not any merger at law by the conjunction of the eſtates, they being veſted in different perſons. — And tho' Miſs *J.* if ſhe was of age, might compel the truſtees in a court of equity to ſurrender the term to her, in order to merge it; yet as ſhe is an infant, a court of equity ought to do for her that which is beſt for her intereſt; at preſent ſhe has not any veſted intereſt in the 2000 *l.* but as it is payable at 18 or marriage.—If ſhe marries, then I think that the portion will be a veſted intereſt in her, and that ſhe and her huſband may direct the truſtees to raiſe it for her uſe. — This portion was originally intended to prefer her in marriage. It may now

be clearly veſted in her, becauſe of her title to the reverſion, which ſhe cannot raiſe any money upon, nor ſettle, by reaſon of her inability of infancy.—I therefore think that after her marriage, or after ſhe attains 18 years of age, it may be raiſed, and that her huſband will be entitled to it at her marriage, as a perſonal intereſt veſted in her; or if ſhe ſhould be ſole ſhe may diſpoſe of it by will: or otherwiſe her perſonal repreſentatives will be entitled to it. If ſhe be in poſſeſſion of the eſtate by her guardians, and receives the profits of the whole, I think that ſhe then in effect receives the intereſt; or her guardians (if ſhe has any ſuch) for her uſe; and therefore the intereſt of every charge ought generally to be kept down by thoſe who receive the profits. She cannot receive them and charge the eſtate with intereſt of the 2000*l.* for then ſhe would receive it twice in effect.

If Miſs marries, I think that if the truſtees decline raiſing the money, the huſband may compel them to do it by a bill in equity, the caſe of the huſband will be much ſtronger if her makes a ſettlement on the lady in conſideration of this portion.

And it is declared, that the aſſignment of the ſaid mortgage of 1000*l.* and the transfer of the ſaid 1000*l.* Bank annuities, made to the ſaid truſtees, was ſo made to them *upon* the truſts following, *viz*,

In truſt for the ſaid Lady *A. J.* till the marriage, and after the ſaid marriage.

Then, in truſt for the ſaid *J. J.* for his life; and after his deceaſe,

Upon truſt to pay the ſame to all and every the younger ſon or ſons, daughter and daughters, in caſe of iſſue-male, or to all and every the daughter and daughters, in caſe of failure of iſſue male, at ſuch times, in ſuch ſhares, and the ſhares to veſt in ſuch manner, and with ſuch benefit of accrewer as before mentioned, concerning the ſaid 2000*l.* to be raiſed by virtue of the ſaid term of 500 years, the ſame being intended for the augmentation of the portions to be raiſed under the ſaid term: But in caſe there ſhall be no ſuch ſon or ſons, daughter or daughters, who ſhall live to be intituled to the portions before mentioned for them, Then,

In truſt to transfer and pay the ſaid 1000*l.* Bank annuities to the ſaid *J. J.* his executors, &c.

A proviſo

A proviſo that the ſaid truſtees with the conſent of the ſaid *J. J.* during his life may call in the ſaid 1000*l.* ſecured by mortgage, and ſell the ſaid 1000*l*, *Bank annuities*, and lay out the money ariſing by the ſale on other real or government ſecurities, upon the truſts as they were before.

The 1000*l.* ſecured by the *Iriſh* mortgage, with the intereſt thereon, has, ſince Mr. *J.'s* death, been paid off and received by Lady *A. J.* and not accounted for to the truſtees.

The truſtees alſo transfered the *Bank annuities* to Lady *A. J.* without ſecurity.

Lady *A. J.* is ſince dead, having bequeathed her perſonal eſtate to Lord *G.* Lord *N.* Mr. *A.* and Col. *J.* her executors upon truſt.

They have proved her will.

Query, Muſt theſe ſums be replaced to the truſtees under the ſettlement of the executors of Lady *A. J.'s* will? And from what time muſt they account for the intereſt on them?

Opinion. The truſt of theſe ſums of 1000*l.* and 1000*l.* was declared to Mr. *J.* the father for life, with remainder to the younger children if a ſon, and to the daughter or daughters, if no ſon; ſo that the Lady *A. J.* took theſe ſums under a truſt to pay them to the ſole daughter and child of Mr. *J.* As the truſtees have now, I preſume, ſufficient effects of her Ladyſhip's to replace this money, I think that they ought to do ſo. Or if Miſs *J.* ſhould marry, then I think it would be veſted in her as a perſonal intereſt, and that it may be ſecurely paid to her and her huſband upon their releaſe or diſcharge.

I think they will be accountable for intereſt for all the time Lady *A. J.* had it in her hands; for her Ladyſhip might have laid it out either upon proper ſecurities, or in the ſtocks, and then it would have carried an intereſt.

Lincoln's Inn, April 24 1767. *R. Wilbraham*

CASE.

A ſhort time before the election at *L.* in 1754, Mr. *M.* (then under age) being deſirous to ſerve the late Sir *F. G.* a candidate for *L.* deſired Sir *F.* would purchaſe a burgage to be conveyed to ſome perſon who might vote for Sir *F.* Sir *F.* did accordingly contract with Dr. *A.* for a burgage for the conſideration of ——— pounds, and Sir *F.* gave the Dr. his bond for ——— pounds and lawful intereſt; and the Dr. conveyed the premiſes according to the directions of Sir *F.* Soon after the election the Dr. was applied to by Mr. *M.*'s agent for an abſtract of his title, which being produced, ſome objections were made to it by Sir *E. W.* and the Dr. not anſwering the objections, the affair ſlept a conſiderable time, but Mr. *M.* being deſirous to fulfil Sir *F.*'s agreement, (Sir *F.* being dead) gave his agent directions to prepare conveyances to be executed by the Dr. of the premiſes, and accordingly conveyances were drawn, and Mr. *M.*'s agent's clerk waited upon the Dr. with the draft, which the Dr. conſulted his attorney upon, who ſaid the conveyance was not properly drawn, for that the Dr. had conveyed the eſtate to one *M.* in whom the title then was. The Dr. was then deſired to ſhew the bond or to give a copy, both which he refuſed; he afterwards was wrote to by Mr. *M.*'s orders, to deſire to be informed what was the conſideration of the bond Sir *F.* gave him, to which letter he ſent the following anſwer. "As he might not underſtand the queſtion, or if he did, the tendancy of it, he muſt deſire to be excuſed from making any reply." The Dr. was afterwards, (*viz.*) at the laſt *L.* election, wrote to by Mr. *M.*'s order, and the conveyances were prepared and ſent by a meſſenger to the Dr. which he was deſired to execute, and he was aſſured by letter from Mr. *M.*'s agent that he would immediately after the election wait upon him with the conſideration agreed for, and the Dr. was then informed, that the houſe being before conveyed to *M.* to vote at a former election, would be no objection, provided *M.* did not appear; the Dr. was alſo told in the ſame letter, that if he refuſed to execute ſuch conveyances both Lady *G.* and Mr. *M.* ſhould think themſelves abſolutely diſcharged from any obligation they might then be under of taking the burgage. To this letter the defendant ſent the following anſwer, (*viz*) "I am very ſorry that it is not in my power to oblige Lady *G.* and Mr. *M.* in conveying the burgage as deſired, I have conſulted an attorney on this occaſion, and he aſſures me it is already conveyed to *M.* by direction of Sir *F. G.* I have no further intereſt in it; I wrote to Lady *G.* by *Friday's* poſt and acquainted her how the affair ſtood. I muſt confeſs I am not a little ſurpriſed that I am requeſted to do an act which I apprehend I cannot do with ſafety to myſelf, and which would, I conceive, have a very odd appearance ſhould *M.* (was I to execute the conveyances now ſent) produce

thoſe which are in his hands." The Dr. of late has been very preſſing to have his bond diſcharged, and laſt term commenced an action againſt Lady *G.* upon which action he has declared, and to which Lady *G.* has demurred. But as it was Mr. *M.*'s intention to ſerve Sir *F.* at his election, he is willing to indemnify Lady *G.* but from the Doctor's behaviour in this affair is alſo determined, if poſſible to avoid payment of the bond, and taking the houſe, &c.

Obſerve, that this houſe has, ſince the Dr.'s conveyance to *M.* been conveyed to ſeveral others to anſwer the purpoſe of elections, and it is now not known who has the legal title to the premiſes.

1ſt *Query.* Upon the whole complexion of this caſe, what is the moſt adviſeable method to take? And whether or no you are of opinion equity can aſſiſt, if it can, in what manner will it be proper to apply to the court, whether before or after judgment is obtained on the bond?

Opinion. I am of opinion, that no proper defence can be made againſt the bond for 200*l.* to Dr. *A.* he having conveyed the burgage to *M.* upon a *truſt* for Sir *F. G. nominally*, but upon the facts ſtated to me *occaſionally* for Mr. *M.* Lady *G.* as adminiſtratrix of her huſband Sir *F.* is bound to pay the money; and in ſtrictneſs, if the tranſaction is conſidered as the act of Sir *F. G.* the conveyance ought to be made by *M.* the truſtee to the heir at law of the *ceſtui que truſt.* Mr. *M.*'s only defence is his minority, of which he *occaſionally* will not take advantage. This I preſume upon his known honour. AND therefore though the bond ought, as I have ſaid, in ſtrictneſs of law, to be paid by Lady *G.* and the conveyance to be made to Miſs *G.* the heir. YET in juſtice, I think, Mr. *M.* ought to pay the money, and accept the conveyance.

2*d Query.* Can Lady *G.* upon the merits of this caſe, provided ſhe pays to Dr. *A.* recover the ſame of Mr. *M.*

Opinion: I am of opinion, that in ſtrictneſs of law, and the courſe of a court of equity, Lady *G.* cannot recover from Mr. *M.* by reaſon of his infancy at the time of the tranſaction in 1754. But I take it for granted he will not avail himſelf of that defence.

17 *Nov.* 1762. *C. Yorke.*

CASE.

C A S E,

24th *Sept.* 1734. BY indenture of releaſe (executed by bargain and ſale for *one* year) between *H. D.* Eſq; of the firſt part, *A. M.* Eſq; and *S. M.* (his only daughter) of the ſecond part, *W. B. A. P. S. M.* and *W. M.* of the third part; the ſaid *H. D.* in conſideration of an intended marriage with the ſaid *S. M.* and of the ſum of —— —— pounds paid to him by the ſaid *A. M.* as and for the marriage portion of his ſaid daughter, *&c. did grant, &c.* unto the ſaid *B. P. M.* and *W. M.* ALL that manſion houſe in *D.* and all that farm diſtinguiſhed by the name of the *Houſe Farm* of the yearly rent of ———— pounds. TO HOLD to the ſaid truſtees their heirs and aſſigns for ever, *To* the following uſes, (namely)

To the uſe of the ſaid *H. D.* his heirs and aſſigns until the marriage.

Then, *To* the ſaid *H. D.* and his aſſigns during his life, with limitations.

To truſtees to preſerve contingent rents. AND after the deceaſe of the ſaid *H. D.*

To the uſe of the ſaid *S.* his intended wife for her life.

Remainder, To firſt and other ſons in *tail male.*

To all and every daughter or daughters, and the heirs of their bodies, as tenants in common.

AND in default of ſuch iſſue,

To the uſe and behoof of the heirs of the ſaid *H. D.* on the body of the ſaid *S.* to be begotten.

Remainder, To the uſe and behoof of the ſaid *H. D.* his heirs and aſſigns for ever.

N. B. The ſaid marriage took effect, and the ſaid *H. D.* and *S.* are yet living, *as alſo* two ſons of the ſaid marriage, which are the whole iſſue, and there is no poſſibility of having more, being upwards of 60 years of age each.

The two ſons are now of age, and *one* of them married and has ſeveral children, and both having occaſion for money, have propoſed a ſecurety of the reverſion of the ſettled eſtate.

Query. Can the two ſons by levying a fine of the reverſion of the ſettled eſtate, make a good ſecurety thereof to a mortgagee, (expectant).

(expectant on the deaths of the ſettler and his wife) notwithſtanding they ſhould both happen to die in the life-time of their father and mother?

The reverſion in fee is in neither of the two ſons, for it never paſſed out of the father by the ſettlement, but ſtill remains veſted in him, and he only is legally ſeiſed thereof; and the father may at any time grant it to whom he pleaſes, or deviſe it away by his will: Wherefore I am of opinion that the two ſons cannot make a good ſecurity to a mortgagee by levying a fine, or any other way.

Sept. 5, 1767. *W. Rivet.*

CASE.

April 3, 1748. *W. C.* by his will of that date, after giving divers lands to his neice *R. E.* abſolutely gave, deviſed and bequeathed unto the governors of the Infirmary in the liberty of *Weſtminſter*, three leaſehold meſſuages ſituate in *Bennet-ſtreet*, *Weſtminſter*, therein particularly deſcribed with their appurtenances, to the uſe and benefit of the ſaid infirmary, ſubject to ſuch eſtate in the ſame as by the laſt will of his deceaſed father, dated the ——— day of ———, his brother *G. C.* (who had then been in foreign parts for near two years, and was then ſuppoſed to have died abroad, and had not been ſince heard of) might have or claim therein: And ordered his executor as ſoon as convenient after his death, to transfer and aſſign the ſaid leaſehold premiſſes and the leaſe by which the ſame are held to the ſaid governors and their ſucceſſors, or ſuch perſon as the governors for the time being ſhould appoint their executors, adminiſtrators and aſſigns, for the remainder of the term or terms as ſhould be then to come, ſubject as aforeſaid.

He alſo gave to the truſtees of the boys charity ſchool at *Hertford* 100 *l.* S. S. ſtock, called N. S. S. A. ſtock, then ſtanding in his name, and the intereſt thereof, to be due at his death, to be by the ſaid truſtees applied for the uſe and benefit of the ſaid boys, and ordered his executrix to transfer the ſame as ſoon as convenient after his death.

He alſo gave to ſaid truſtees of the boys charity ſchool 100 *l.* to be by them applied to the uſe and benefit of the girls educated in the girls charity ſchool at *Hertford*, and ordered his executrix to pay the ſame 100 *l.* to the ſame truſtees within three calendar months next after his deceaſe; and gave to the reverend Mr. *N. H.* his japanned cabinet, then ſtanding in the houſe he then lived in, with all things that ſhould be therein at the time of his death; and alſo all his books and manuſcripts, and all other his papers whatſoever (except ſuch as

belonged to his real or perſonal eſtate or effects) to and for his the ſaid *N. H.*'s own uſe and benefit, and appointed the ſaid *R. E.* ſole executrix thereof, and his reſiduary legatee.

By a codicil annexed to the ſaid will, the teſtator after reciting that ſince the making thereof he had depoſited in the hands of Mr. *H.* (one of the truſtees of the ſaid boys charity ſchool) ſeveral drafts, bank and other notes, or bills for money, amounting in the whole to 173*l.* 17*s.* 1*d.* and alſo four blank lottery tickets in the year ———, releaſed his ſaid executrix from the ſaid 100*l.* given by his ſaid will to the uſe of the girls charity ſchool; and directed the ſaid Mr. *H.* to keep in his hands out of the ſaid drafts, *&c.* or monies to be received thereon 100*l.* to be applied to the uſe of the ſaid girls, as he ſhould think proper.

He alſo deſired the ſaid Mr. *H.* to retain in his hands for his own uſe for the trouble given him 21*l.* other part of the monies or ſecurities for money depoſited in his hands as aforeſaid (being therein mentioned to be the money that was at the time of making his ſaid will, in the cabinet he had by his ſaid will given to the ſaid Mr. *H.* and then by the teſtator intended to remain therein till his death.

And he alſo directed the ſaid Mr. *H.* to apply within twelve calendar months after his death, the reſidue of the aforeſaid drafts, *&c.* and the money ariſing thereby among indigent people, in ſuch manner as he and Mr. *B. T.* ſhould think fit, without being accountable for the ſame to any perſon: And by his ſaid codicil he gave all the ſaid drafts, *&c.* unto the ſaid *N. H.* for the uſes aforeſaid; and declared that no part of the ſaid monies or ſecurities for monies, ſhould be liable to the payment of his debts or other legacies, it being his intention and will that his ſaid executrix ſhould pay all ſuch ſmall debts or ſums of money, as he might happen to owe at his deceaſe, out of his eſtates deviſed and given to her by his ſaid will; and confirmed his ſaid will in all other reſpects.

The teſtator received the ſaid bills, drafts, *&c.* of Mr. *H.* and gave him a diſcharge for the ſame; and acknowledged thereby that he had no other demand on the ſaid Mr. *H.* on any account.

The executrix cannot learn what the teſtator did with the money ariſing by the ſaid bills, *&c.* otherwiſe than that Mr. *H.* informs her, that the teſtator told him that he went to *London* to place the ſaid money or greateſt part thereof in the funds: And that the executrix ſince the teſtator's death, finds there is ſtanding in his name the ſum of 312*l.* N. S. S. A. ſtock, 100*l.* whereof was purchaſed by the teſtator before the making of his will, and the remainder was purchaſed at three ſeveral times ſince the receipt of the ſaid bills, *&c.* of Mr. *H.* and ſince the making of the ſaid will and codicil.

N. B. The teſtator died the —— day of —— laſt.

Query,

Query, Is the above deviſe of the three houſes in *Bennet-ſtreet* within the intent of any of the *ſtatutes of mortmain?* Is the executrix chargeable with the 100*l.* N. S. S. A. given to the boys charity ſchool, or is not that bequeſt within the intent of any of the ſaid ſtatutes? And is ſhe chargeable with the payment of the 100*l.* given to the girls charity ſchool, or the legacy given to Mr. *H.* for his trouble, or to the reſidue of the money ariſing from the above drafts, to be diſtributed among indigent perſons, all which were by the teſtator directed to be paid out of the depoſitums in Mr. *H.*'s hands; or is the taking of thoſe depoſitums out of Mr. *H.*'s hands, which was depoſited as a fund for payment thereof, a revocation of ſuch part of the codicil; and if it is not a revocation for ſo much, is not the ſaid legacy of 100*l.* given to the girls charity ſchool, within the meaning of any of the *ſtatutes of mortmain?*

Opinion, I think the deviſe of the three houſes to the infirmary is void by the late ſtatute. The bequeſt of the 100*l.* N. S. S. A. ſtock to the boys charity ſchool is good, and the executrix chargeable with it. The teſtator's diſpoſing of the bills and drafts was, I conceive, a redemption of the legacies given out of them; but if that was not a redemption or revocation, the bequeſt to the girls charity ſchool is good, notwithſtanding the late act.

Oct. 11, 1750. *D. Ryder.*

C A S E,

Nov. 15, 1722. *T. S.* of *S.* in the county of *Worceſter*, apothecary, by deed of marriage ſettlement, dated the —— day of ——— and made between the ſaid *T. S.* of the firſt part, *E. C.* of the ſecond part, and *W. W.* and *J. S.* of the third part, reciting a leaſe from the mayor, aldermen and citizens of the city of *Worceſter*, dated the —— day of ——— to the ſaid *E. C.* her executors, adminiſtrators and aſſigns, for the term of —— years, renewable every —— years, according to the cuſtom of the corporation, of certain lands and buildings in the ſaid city, ſubject to the rents, covenants and agreements therein contained. *It is witneſſed*, that in caſe of a marriage between the ſaid *T. S.* and *E. C.* and that the ſaid leaſehold premiſſes ſhould be ſettled and conveyed in manner therein mentioned. The ſaid *E. C.* in conſideration as aforeſaid, *did* grant, bargain, ſell, transfer, aſſign and ſet over unto the ſaid *W.* and *J. S.* their executors, adminiſtrators and aſſigns, the ſaid premiſſes and term, *to hold* to the ſaid *W.* and *J. S.* their executors, adminiſtrators and aſſigns, for the remainder of the ſaid term, *in truſt*, to permit and ſuffer the ſaid *E. C.*

her executors, adminiſtrators and aſſigns, to receive the rents, iſſues and profits thereof, until the ſaid marriage ſhould take effect; and after the ſolemnization thereof, in truſt for the ſaid *T. S.* to receive the ſaid rents and profits thereof during ſo many years of the ſaid term as the ſaid *T. S.* ſhould live; and after the ſaid *T. S.*'s death, in truſt for the ſaid *E. C.* to receive the ſaid rents and profits during ſo many years of the ſaid term as ſhe ſhould live; and after her deceaſe, in truſt to permit and ſuffer ſuch child and children of the body of the ſaid *E.* by the ſaid *T. S.* lawfully begotten and living at the deceaſe of the ſurvivor of the ſaid *E.* and *T.* which by the rule of common law of *Great Britain*, ſhould from time to time be heir and heirs of the body of the ſaid *E.* by the ſaid *T.* to receive and take to his, her and their own uſe and uſes, the rents and profits of the ſaid premiſſes, during the remainder of the ſaid term, after the deceaſes of the ſaid *E.* and *T.* and the ſurvivor of them; and for want of ſuch child or children of the marriage, and living at the deceaſe of the ſurvivor of the ſaid *E.* and *T.* in truſt for the ſaid *W. W.* and *J. S.* and the ſurvivor of them, and the executors, adminiſtrators and aſſigns of ſuch ſurvivor, to permit and ſuffer the executors, adminiſtrators and aſſigns of the ſaid *E.* to receive the rents and profits of the ſaid premiſſes, during the remainder of the ſaid term: And it is further agreed between the ſaid parties, in caſe the ſaid marriage ſhould take effect, that the ſaid eſtate and term of the ſaid leaſehold premiſſes, ſhould from time to time, and at all times thereafter, ſo long as the ſame might be done, be renewed and kept on foot, in ſuch manner and for the like eſtate and term, as the ſame were then held, or otherwiſe, according to the uſual method of renewing ſuch eſtates, and to that end and intent that the aforeſaid leaſe, made as aforeſaid, for the ſaid term of —— years, and thereby aſſigned to the ſaid *W.* and *J. S.* in manner aforeſaid, ſhould, within the ſpace of —— years be renewed, and from thenceforth from time to time at the end of every —— years, from the commencement of the ſaid leaſe, or within —— months next after, be renewed conſtantly at the expence of the perſon or perſons then being and enjoying the rents and profits of the ſaid premiſſes; and that upon every neglect of ſuch perſon or perſons obtaining ſuch renewal, it ſhall be lawful for the ſaid *W.* and *J. S.* and the ſurvivor of them, or the executors, adminiſtrators or aſſigns of ſuch ſurvivor, at all times thereafter to renew the ſaid eſtate, and obtain one or more new grant or grants of the ſaid premiſſes, and that the ſame ſhould be veſted in the ſaid *W.* and *J. S.* and the ſurvivor of them, and the executors, adminiſtrators and aſſigns of ſuch ſurvivor, to and for the ſame uſes, truſts, intents and purpoſes thereby before raiſed: And the ſaid *T. S.* in conſideration of the ſaid marriage ſettlement and agreement, and in regard that the ſaid *T. S.* had not any real eſtate to ſettle as a jointure on the ſaid *E.* and for making a competent proviſion for the ſupport and livelihood of the ſaid *E. C.* in caſe ſhe ſhould ſurvive the ſaid *T. S.* *did* for himſelf, his heirs, executoes and adminiſtrators, covenant, promiſe and agree with the ſaid *W.* and *J. S.* their executors and adminiſtrators,

and the executors and adminiſtrators of the ſurvivor of them, in caſe the ſaid marriage ſhould take effect, and the ſaid *E.* ſhould ſurvive the ſaid *T. S.* that then the executors and adminiſtrators of the ſaid *T. S.* ſhould within —— months after the deceaſe of the ſaid *T. S.* pay into the hands of the ſaid *W.* and *J. S.* or the ſucceſſor of them, the ſum of 400*l.* upon truſt that the ſaid 400*l.* ſhould be laid out in the purchaſe of lands or houſes, to be ſettled and conveyed upon the ſaid *E.* during her natural life, and after her deceaſe, to the uſe of the heirs of the body of the ſaid *E.* by the ſaid *T.* lawfully to be begotten; and for want of ſuch iſſue, to the uſe of the heirs of the body of the ſaid *T. S.* lawfully to be begotten; and in default of ſuch iſſue, to the uſe of the heirs of the ſaid *T. S.* for ever. And upon further truſt, until ſuch purchaſe ſhould be made, the ſaid *E.* after payment of the ſaid 400*l.* during her life, ſhould have and receive to her uſe the increaſe and profit of the ſaid 400*l.* but if the ſaid *E.* ſhould have iſſue living by the ſaid *T.* and the ſaid *E.* ſhall die before ſuch purchaſe ſhall be made, then the ſaid *W.* and *J. S.* their executors or adminiſtrators, until ſuch purchaſe ſhall be made, ſhall and will diſpoſe of the increaſe of the ſaid ſum of 400*l.* for the uſe and benefit of ſuch perſon and perſons as is or are to have the ſame land or houſes ſo to be purchaſed, when ſuch ſhall be conveyed and ſettled; provided that it ſhould be lawful for the ſaid *E.* and *T.* in caſe the ſaid marriage ſhould take effect, during their joint lives, by any deed or writing, under both their hands and ſeals, teſtified by two or more credible witneſſes, to revoke, alter or change the aforeſaid truſts or agreements of ſettlement of the ſaid 400*l.* to be paid as aforeſaid, and to nominate and appoint how and in what manner the ſaid 400*l.* ſo to be paid as aforeſaid to the hands of the truſtees, ſhould be ſettled or diſpoſed of, as to them ſhall ſeem meet; and after ſuch alteration, the aforeſaid truſts repoſed in the above-named truſtees, as to the ſaid 400*l.* ſhall ceaſe; and that after the ſaid *T.* and *E.* ſhould have made ſuch new nomination or appointment, it ſhould be lawful for the ſaid truſtees to lay out, ſettle, or otherwiſe pay and diſpoſe of the ſaid 400*l.* and intereſt thereof, as the ſaid *T. S.* and *E.* his wife ſhould nominate, direct and appoint, *&c.*

The marriage took effect, and no appointment was made in the life-time of the ſaid *E.* and *T. S. T. S.* died about —— years ſince, made a will, left iſſue, one ſon and one daughter, *W.* and *S. S.* before the death of the ſaid *T. S.* married *W. W.* and alſo left his widow *E. S.* ſince dead.

By leaſe of the ſaid leaſehold premiſſes, bearing date the —— day of ——, between the ſaid mayor, aldermen and citizens of the ſaid city of *Worceſter* of the one part, and the ſaid *T. S.* of the other part, the ſaid corporation, in conſideration of the ſurrender of a leaſe made by the ſaid corporation to the ſaid *T. S.* of the ſaid premiſſes, dated the —— day of ——; as alſo for the conſiderations therein mentioned, *did* demiſe, grant, ſet and to farm let, unto the

ſaid

ſaid *T. S.* ALL the ſaid premiſſes, with the appurtenances, *To hold* the ſaid premiſſes unto the ſaid *T. S.* his executors, adminiſtrators and aſſigns, after the feaſt of the Annunciation of the Bleſſed Virgin *Mary* then laſt paſt, for and during the term of ——— years. *&c.*

Theſe corporation leaſes are granted for —— years abſolute, but at the end of —— years renewable for another term of —— years, paying —— years rent as a *fine*, and ſubject to the conditions therein contained.

T. S. by his laſt will duly executed, dated the ——— day of ——, deviſed and bequeathed to his ſon *W. W.* the ſum of 10 *l.* to buy him mourning, to be paid him immediately after his death by his executrix out of his perſonal eſtate (he my ſaid ſon *W. S.* having a proviſion made him by my wife *E. S.*'s marriage ſettlement, made before my intermarriage with her) deviſed and bequeathed unto his ſon-in-law *W. W.* his heirs and aſſigns for ever, immediately after his deceaſe, ALL that his freehold and copyhold eſtate, and eſtates, *&c.* with the appurtenances, ſituated at *W*——— in the pariſh of *M*——— in the county of *S*——, my ſaid ſon-in-law permitting my dear and loving wife *E. S.* and her aſſigns, to receive and take the rents and profits of the ſaid freehold and copyhold premiſſes, to her and their own uſe and benefit, during the term of her natural life.

He likewiſe deviſed and bequeathed unto his dear and loving wife *E. S.* ALL and ſingular his meſſuages or tenements, buildings, lands and premiſſes, ſituated at *S.* aforeſaid, and all other his real and perſonal eſtate whatſoever and whereſoever, not herein before diſpoſed of, after payment of his juſt debts, legacies and funeral expences, to be at her diſpoſal, as ſhe ſhall think proper, by any deed or writing under her hand and ſeal, grant, convey, limit, declare, give or appoint, or by her laſt will and teſtament in writing by her duly executed, in the preſence of three or more credible witneſſes, give, deviſe and bequeath; and for want of ſuch grant, conveyance, uſe, limitation, declaration, appointment, gift, deviſe and bequeſt as aforeſaid, by his ſaid dear and loving wife, that from and after her deceaſe the ſaid meſſuages, tenements, buildings, lands and premiſſes, at *S*——— aforeſaid, together with my perſonal eſtate, (after payment of his juſt debts, legacies, and funeral expences as aforeſaid,) I give, deviſe and bequeath the ſame unto my ſon-in-law *W. W.* and *S.* his wife, their heirs and aſſigns, *ſubject* to the payment of an annuity or yearly rent charge of the ſum of 10 *l.* of lawful money of *Great Britain*, to my ſaid ſon *W. S.* during the term of his natural life; and for want of iſſue of the body of the ſaid *S. W.* by the ſaid *W. W.* then I give, deviſe and bequeath the ſame to my right heirs for ever: and appointed his ſaid wife *E. S.* ſole executrix.

E. S.

E. S. widow of *T. S.* by her will dated the ——— day of ———, after payment of her juſt debts, and the juſt debts of her late huſband, by her executrix, together with her funeral expences and legacy, *did* give, deviſe and bequeath all her houſehold goods and furniture (except as hereafter is deviſed) unto her ſon *W. S.* and unto her daughter *S. W.* their heirs and aſſigns for ever, to be equally divided between them, ſhare and ſhare alike.

She did further give, deviſe and bequeath unto her ſaid daughter *S. W.* her heirs and aſſigns for ever, and for her own ſeparate uſe and diſpoſal, notwithſtanding her coverture, all her plate and wearing apparel, ſhe paying unto her ſaid ſon *W. S.* the ſum of 10*l.*

I alſo give, deviſe and bequeath unto my ſaid daughter *S. W.* who I hereby appoint ſole executrix of this my will, all the reſt, reſidue and remainder of my real and perſonal eſtate, which I ſhall die poſſeſſed of, and to her heirs and aſſigns for ever, and at her own diſpoſal, notwithſtanding her coverture; but ſubject to the payment of the 400*l.* to my ſaid ſon *W. S.* according as it is provided for him in my late huſband's marriage ſettlement with me; and alſo ſubject to the payment of the ſum of 20*l.* a year to my ſaid ſon *W. S.* during the term of his natural life, and to be paid him quarterly by equal portions; and alſo that my ſaid ſon *W. S.* ſhall be at liberty to live and reſide in the houſe now in the poſſeſſion of *P*——— without paying any rent for the ſame during his life, he keeping the ſame in repair.

The ſaid *E. S.* made another will dated the ——— day of ———, and died the ——— day of ———; which ſaid laſt will of ——— was found cancelled with the ſeal tore off, together with the name; and the will dated the ——— was found uncancelled, but no memorandum or any notice taken that ſuch will had been reſigned, ſealed and dated after the making void of the will of the ———.

1ſt *Query*, By the words of Mr. *T. S.*'s will, had his widow Mrs. *E. S.* any right to diſpoſe of either the real or perſonal eſtate, or any part (which Mr. *T. S.* died poſſeſſed of) after her deceaſe; the deviſe being to her without any limitation of time, or to her executors, adminiſtrators or aſſigns: And if ſhe had a right to diſpoſe of the real or perſonal eſtate, or any part, did ſhe not die inteſtate, as the laſt will made is cancelled, the will of the ——— day of ——— left with the name and ſeal on, but no memorandum that ſuch will was re-executed, after cancelling the laſt will, neither was it ever re-executed?

Opinion. I am of opinion, that by Mr. *T. S.*'s will, if it was properly executed, *E. S.* his widow, had full right and power to

to diſpoſe of by her will of all the lands and premiſſes at *S*—— and all other his real and perſonal eſtates not before diſpoſed of by his will, after payment of his debts, legacies, and funeral expences; and I think the will of the ——— day of ———, if properly atteſted, is a valid diſpoſition of all her real and perſonal eſtates, and likewiſe of that part of her huſband's real and perſonal eſtates, of which he gave her the power to diſpoſe; for by the *ſtatute of frauds and perjuries*, it is enacted, that no deviſe in writing of lands and tenements ſhall be revoked, otherwiſe than by ſome other will, or writing declaring the ſame, ſigned in the preſence of three or four witneſſes, or by burning, cancelling, tearing or obliterating the ſame by the teſtator himſelf, or in his preſence, by his directions: It is therefore free from doubt, that the will of the ——— day of ———, as it is above ſtated, is no revocation of the will of the ——— day of ———.

2d *Query*, There never has been any truſt made uſe of or carried on relative to the marriage ſettlement and leaſehold premiſſes, but the leaſes of ſuch leaſehold premiſſes have been from time to time granted by the mayor, aldermen and citizens of the city of *Worceſter*, to Mr. *T. S.* his executors, adminiſtrators and aſſigns, abſolute, and not to the truſtees plaintiffs in the ſettlement; therefore will not Mr. *W. W.* and *S.* his wife be entitled to theſe leaſehold premiſſes, by the words of the will of Mr. *T. S.* (viz.) together with my perſonal eſtate, and under ſuch deviſe cannot Mr. *W.* recover that eſtate by *ejectment*, or by what other means can Mr. *W.* recover the rents of ſuch premiſſes, *W. S.* being in the receipt thereof; or if ſuch leaſehold eſtate will in equity go according to the clauſes in the marriage ſettlement, will not Mr. *W.* and his wife be equally entitled with *W. S.* the ſame being a chattel; and as Mr. *W. S.* has received the rents of the leaſehold premiſſes for the laſt five years, without any authority from Mr. *T. S.* or Mrs. *E. S.* after the death of *T. S.* is not Mr. *W.* and *S.* his wife entitled to recover ſuch rents (of the ſaid *T. S.* he never accounting for ſuch rents) as reſiduary legatees of *T. S.* and by what means muſt Mr. *W.* and his wife recover the ſame, or muſt Mr. *W.* recover the ſame of the tenants as rents in arrear?

Opinion. The leaſe from the city of *Worceſter*, though renewed in the name of Mr. *S.* will be as effectually governed and controuled by the ſettlement of the ——— day of ———, as if it had been renewed in the names of the truſtees, for the purpoſe of the truſts contained therein; Mr. *T. S.* had no right to diſpoſe of thoſe premiſſes by his will, they belong wholly to *W. S.* the ſon, upon the death of his mother, as his abſolute property; they being to go upon the deaths of *T. S.*

T. S. and his wife, to ſuch child of them, who would by the rule of the common law be heir of their bodies, which deſcription is compleat in *W. S.* the ſon, and Mrs. *W.* will not be entitled to any ſhare thereof, although the leaſe is a chattel. Mrs. *S. W.* has a right to recover the *five years* arrears of rent from the tenants, as executrix to her mother and father; for as her mother was ſole executrix of her father, and ſhe is ſole executrix of her mother, ſhe by law becomes ſole executrix of her father, and conſequently may recover the rent in arrear from the tenants. But it is incredible that *W. S.* ſhould receive rent for *five years* without any authority from his father or mother, and if it appears that the father and mother knew of ſuch receipts and acquieſced in it, Mrs. *W.* will not eaſily recover it from the tenants: but if her brother cannot make out ſome proper diſcharge from his father and mother for the *five years* rent, either by gift from them to him, or otherwiſe, I think the reſt may be recovered from her brother; as to what was received in her father's life-time, as his executrix, in her mother's life-time, as executrix to her, by a common action; and unleſs the brother can prove ſome diſcharge by gift or otherwiſe from his father or mother, he is without defence.

3d *Query.* Mr. *T. S.* did not die poſſeſſed of perſonal eſtate (except the leaſehold premiſes) more than ſufficient to pay his debts, but his fortune conſiſted of lands and buildings, (which his wife *E. S.* received the rents, iſſues, and profits of during her life, according to the purport of his will) no buildings, lands, or premiſes were ever purchaſed by the ſaid *T. S.* to any ſuch uſes as mentioned in the marriage ſettlement. Can *W. S.* the ſon of the ſaid *E.* and *T. S.* or the legal repreſentatives of the ſurvivor of the ſaid *W.* and *J. S.* (the truſtees in the ſettlement) come upon any part of the eſtate or eſtates purchaſed by the ſaid *T. S.* and in his own name, and to his own uſe, without any ſuch truſts or uſes as mentioned in the ſettlement? Or can the ſaid *W. S.* or the repreſentative of the ſaid *W.* and *J. S.* compel Mr. *W.* and his wife to raiſe ſaid 400*l.* out of the eſtate, or any part purchaſed by the ſaid *T. S.* deceaſed, and to go to the uſes mentioned in the clauſe in the marriage ſettlement? and if ſuch 400*l.* is liable to be raiſed, is not Mr. *W.* and his wife equally entitled with *W. S.* in ſuch ſum of 400*l.*

Opinion. I am of opinion, that by virtue of Mr. *T. S.*'s covenant in the marriage ſettlement, that *W. S.* the ſon is entitled to the 400*l.* to be raiſed in purſuance of ſuch ſettlement; and that the repreſentatives of the ſurviving truſtee are ſpecialty creditors of *T. S.* for that ſum of 400*l.* and may go upon

any part of the eſtates purchaſed by the ſaid *T. S.* in his own name, and may compel Mr. *W.* and his wife to raiſe 400*l.* out of all, or every part of the eſtates, purchaſed by *T. S.* to go to the uſe of the marriage ſettlement; and Mr. *W.* and his wife are not entitled with *W. S.* to any ſhare of ſuch 400*l.* and if *W. S.* was to bring a bill in *Chancery* againſt *W.* and his wife, to raiſe and pay him the 400*l.* in ſpecie, as he is tenant in tail of the land to be purchaſed with that ſum, and could by a fine acquire the abſolute property of ſuch land, I think the court would order him the payment of the money.

4th *Query.* If Mr. *W.* and wife are entitled under the will of Mr. *S.* Mrs. *S.* thereby not having a diſpoſing power after her death, or Mrs. *S.* dying inteſtate, validiates the title of the real and perſonal eſtates in Mr. *W.* and wife, What method muſt they take to veſt the premiſes to ſuch uſes as they ſhall think proper? Mr. *T. S.*'s will was proved by *E. S.* Mr. *W. S.* upon the death of *E. S.* poſſeſſed himſelf of a conſiderable ſhare of the perſonal effects of the ſaid *T. S.* *E. S.* did not adminiſter to to his effects, or deliver any ſchedule thereof, Muſt Mr. *W.* and his wife adminiſter to the effects of the ſaid *T. S.* as reſiduary legatees? And how muſt Mr. *W.* and his wife recover ſuch effects, or the value thereof?

Opinion. The firſt part of this *query* is anſwered, by having given my opinion, That Mrs. *S.*'s will, if properly executed, is valid; and as Mrs. *W.* is now executrix both of her father and mother, ſhe may call upon her brother to account to her for her father and mother's perſonal eſtates, and recover any thing from her brother, that he has received of their effects, by a common action, as an executrix; and ſhe is to adminiſter her father's eſtate with exactly the ſame power, as if ſhe had been named the ſole executrix in his will.

5th *Query.* Mr. *W. S.* is in poſſeſſion of the meſſuage deviſed to him by the will of *E. S.* to live and reſide in for his life: If Mrs. *E. S.* had not a diſpoſing power, or died inteſtate, What muſt Mr. *W.* do to get Mr. *W. S.* out of poſſeſſion, and to recover rent for the ſame, ſince the death of *E. S.*

Opinion. Mr. *W. S.* is well entitled to the poſſeſſion of the meſſuage for life.

2d. *Jan.* 1768. *C. Sayer.*

CASE.

CASE.

April 17, 1727. LORD *S.* by indenture of leaſe demiſed the premiſes in queſtion, (which are of little value) to *W. B.* his executors, *&c.* for 99 years, now determinable on the death of *J. B.* his ſon.

12th *Sept.* 1759. The ſaid *W. B.* in conſideration of 10*l.* did aſſign the ſaid premiſes (by way of mortgage) to *J. S.* his executors, *&c.* for the remainder of the ſaid term, determinable as aforeſaid. *Proviſoe*, to be void on payment of 10*l.* and intereſt.

N. B. The executors of the ſaid *J. S.* (now deceaſed) have the ſaid leaſe and mortgage in their cuſtody.

The ſaid *W. B.* has been dead about 5 or 6 years; ſince whoſe death the ſaid *J. B.* has been in poſſeſſion of the ſaid premiſes.

The ſaid *J. B.* in the life-time of his father, and to *Sept.* 1764, paid intereſt for the ſaid 10*l.* and now being called upon by the executors of the ſaid *J. S.* to pay off the principal and intereſt due on the ſaid mortgage, pretends that his father *W. B.* (the leſſee) about 20 years ſince, in conſideration of love and affection, aſſigned the ſaid premiſes to him for the remainder of the ſaid term; and that the mortgage is of no effect, his father having no intereſt in the premiſes at the time of making the ſame, therefore refuſes payment of the ſaid money.

Pleaſe to obſerve, that at the time this aſſignment was made to the ſon, (if any ſuch) the leaſe above-mentioned was delivered to him, and afterwards by him returned to the father for the purpoſe of making the ſaid mortgage, and which was made without diſcovering the previous aſſignment to the ſon, (if any ſuch.)

N. B. As the premiſes are of ſmall value, and held but by one life, we ſhall not ſeek relief by *bill* in *equity*.

Query. Therefore, as this caſe is circumſtanced, and as *J. B.* was privy to the mortgage and paid the intereſt during the life-time of his father and the mortgagee, if it is not to be apprehended the executors will recover in ejectment? *Note.* The father died inſolvent.

Opinion. I am of opinion that the aſſignment of the leaſe to the ſon is void, as a fraudulent conveyance within *ſtat.* 27 *Eliz. c.* 4. as againſt the mortgagee and his repreſentatives, and therefore that the executors may recover the premiſes in *ejectment.*—It makes the caſe ſtronger, that the leaſe itſelf

is in the poſſeſſion of the mortgagee, and that *J. B.* the ſon and pretended aſſignee paid intereſt upon this mortgage, which laſt circumſtance I adviſe the leſſor of the plaintiff to be prepared to prove upon the trial of the ejectment.

May 15, 1767. *J. Burland.*

CASE.

PAUPER, aged about 72, born at *H. N.* in *B.* and had been hired to and lived in ſeveral ſervices.

Laſt *Michaelmas (old ſtyle)* was 38 years ſince, to the beſt of his remembrance, he was hired to one Mr. *B. M.* of *W. I.* in *B.* yeoman, for the term of *one year*, ſerved the whole year, and received all his wages, and continued in the ſame ſervice under yearly hirings for 6 or 7 years, when he married, and was then hired by the ſaid *B. M.* as a weekly ſervant, and continued in his ſaid maſter's ſervice in *W. I.* aforeſaid by the week, for upwards of 9 years more.

From *W. I. pauper* removed to *S. S.* in *O.* without a certificate, (and where he is now reſident, and rented) a houſe and premiſes of 4*l.* a year, and kept ſheep to pen to hire, but never paid any rates or taxes, or erved any officein *S. S.* aforeſaid.

Before he came to *S. S.* he purchaſed part of a ſmall eſtate in *D.* in *C.* (under 30*l.*) and ſome years afterwards, he had the other part left him, the whole amounting to 2*l.* 5*s.* by the year. At the ſame time he was poſſeſſed of *two* ſmall life-hold eſtates in *H. N.* aforeſaid, the *one* of the rent of 1*l.* 5*l.* the other of 4*l.* a-year. That ſoon after, being poſſeſſed of the ſaid eſtates he ſold that at *C.* but for how much money does not appear. The other *two* in *H. N.* he now lets, and receives the rent; and that the quit-rent and land-tax have been always deducted out of his rent by the tenant, and that on tenant's complaining of the bargain's being hard, aſked *pauper* to allow ſomething towards the poor's rate in *H. N.* and that he has allowed money to his tenant on that account, but knows not whether it was the whole the premiſ-s were charged at to the poor, or whether *pauper* was rated and aſſeſſed in his own name, cannot ſay, as he never paid the ſame to the officers of the pariſh, but allowed the ſame to his tenant.

Pauper and his wife are both old and infirm, and in want of collection, and the pariſh of *S. S.* and having applied to *W. I.* and *H. N.* they diſown them as pariſhioners.

Againſt the above ſettlement by ſervice, it is urged, that thoſe eſtates in *H. N.* and paying as above, muſt be a ſettlement in that pariſh. On the contrary, pleaſe to obſerve, that there has never been

been any reſidence of the *pauper* ſince he had thoſe eſtates, either in the pariſh of *C.* or *H. N.* And it is ſaid, without reſidence he could gain no ſettlement.

Pleaſe to give your opinion hereon.

Opinion. It is extremely certain, that reſidence, at leaſt for *forty days*, in the pariſh where his eſtate lies, is eſſentially neceſſary to the gaining a ſettlement; otherwiſe, a man by having 5 or 10 different houſes in different pariſhes, would gain 5 or 10 different ſettlements at a time; beſides, the word *ſettlement*, is a term relative to the perſon only; and it would be ſtrange to ſay a man can be ſettled where he never reſided. For theſe reaſons I think the ſettlement is at *W. I.*

May 15, 1767. *G. Nares.*

CASE.

J. G. had a ſiſter courted by *T. R.* his father's apprentice, who got her with child, but refuſed marrying her, her father not complying with his terms.

Some time after her delivery, her ſaid brother, who was entitled to the reverſion and inheritance of an eſtate in fee after the death of his father, propoſed giving *R.* 100*l.* if he married her; which money was to be ſecured to be paid him within *ſix months* after the death of his father, that the ſaid eſtate came into his poſſeſſion.

This was accepted by *R.* a bond was given by the ſaid *J. G.* to *R.* for the ſaid 100*l.* payable, without intereſt, within *ſix months* after the of his father; and they were married.

J. G. died 4th *October*, 1766, and his father not till the 1ſt *April* following, ſo that he was never poſſeſſed of the eſtate. He died greatly in debt, inteſtate, leaving a widow and an infant heir; and his eſtate and effect are inſufficient to diſcharge his bond debts, independent of this.

The adminiſtration of his perſonals was granted the 11th *November* 1766, by the eccleſiaſtical court of the dioceſe to *three* of his bond creditors, who are enjoined by bond, to ſatisfy his creditors by ſpecialty in proportion to their reſpective debts, and ſo far acted as to ſell and diſpoſe of a conſiderable part of the effects, and make *one* diviſion, which diviſion was not made till the 11th *May* 1767, and then the adminiſtrators had no knowledge of this bond, or till

the

the month of *November* after, that it was demanded by *R.* who was during this interval in *L.* a ſoldier in the guards. There are aſſets undivided ſufficient to pay *R.* his proportion with what has been paid the other bond creditors.——Your opinion is deſired.

Query. Whether the bond to *R.* would be conſidered voluntary, and (under the circumſtances of this caſe) void againſt the bond creditors; or whether the adminiſtrators muſt pay him in proportion with the bond creditors, according to the condition of their bonds; or how otherwiſe muſt they act.

Opinion. I conceive the bond was for a good conſideration, and cannot be conſidered as voluntary; and, that the adminiſtrators are obliged to pay *R.* equally in the ſame proportion with themſelves and the other bond creditors.

14th *April* 1768. *W. Rivet.*

CASE.

Green v. *Vernon, an Attorney.*

WHEN *G.* applied to Mr. *V.* firſt, he deſired *V.* to recover a debt, of which *G.* delivered *V.* his bill againſt *W.* which was under 40*s.* *V.* then informed him he muſt ſue for his debt by common law in one of the courts at *Weſtminſter*, and that there was not any other method; for that he could not get it by proceeding in the *county court*, or any *hundred court*, the defendant being a parſon and not a houſekeeper, and no diſtreſs could be taken by proceeding in a *county court* or *hundred court*. An action was brought in the *Common Pleas*; the cauſe was brought on to be tried at *Worceſter ſummer-aſſizes*, 1763. *V.* at the *aſſizes* told *G.* the beſt way would be to enter into *arbitration bonds*; for as the debt was under 40*s.* the court would ſhout at them upon the trial, and he could not recover coſts: ſo *G.* and *W.* entered into *arbitration bonds* to leave it to Mr. *J. W.* of *B.* Mr. *H.* of *H. arbitrators*, and Mr. *I.* of *B. umpire*. Meetings were had, but no award was made; the *arbitrators* declared the debt *juſt*, but being under 40*s.* could not tell how to give coſts for the plaintiff *G.* ſo the *arbitration* dropped. *G.* has from time to time applied to *V.* to bring on the cauſe to be tried, and *V.* has conſtantly promiſed that he would, but never has.

About a month before the laſt *aſſizes*, *V.* pretended to *G.* that he would bring on the cauſe to be tried at the laſt *aſſizes*, and ordered *G.* to bring his witneſſes to *Worceſter* at the *aſſizes*: *G.* had his witneſſes in readineſs, but on the *commiſſion day V.* informed *G.* that he muſt *not* take his witneſſes to the *aſſizes*, for that the cauſe could not be

tried, by reaſon the defendant *W.* was entitled to a *term's* notice of trial, the cauſe being of long ſtanding; ſo then plaintiff *G.* was put off again, and obliged to go to his witneſſes to tell them not to go to *W.*

In *Auguſt* 1766, the plaintiff *G.* applied to his attorney *V.* for him to bring on the cauſe to be tried at the preſent *aſſizes*, and that he would have money in readineſs againſt the *aſſizes* to defray all expences. *V.* promiſed it ſhould be brought on, and *G.* has ſtill continued going to *V.* every week or fortnight ever ſince, ordering and deſiring *V.* to bring the cauſe on to be tried at this preſent *aſſizes*, which *V.* has conſtantly promiſed.

On *Sunday* laſt was a week, and the *Sunday* before that, *G.* went to *V.* ſtill deſiring him to bring on the cauſe, and took with him *ten guineas* for that purpoſe, but *V.* did not receive the money, but ordered *G.* to bring it to the *Star and Garter* in *W.* at the *aſſizes*, and there to bring his witneſſes, and that the cauſe ſhould be tried.

Now *G.* has brought his money and his witneſſes to the *Star and Garter* in *W.* where they have attended according to *V.*'s directions, but no cauſe is entered with the *marſhal*, nor is ſuch cauſe intended to be entered.

This is not the only treatment that *G.* has received from *V.* On the 21ſt *Sept.* 1765, *V.* delivered his bill to *G.* to the amount of 23*l.* 4*s.* 6*d.* in this cauſe, and gives him credit for 8*l.* which he received of *G.* and there remains a balance to *V.* of 15*l.* 4*s.* 6*d.*

The 18th *January* 1766, *V.* iſſued out a *writ* from the *King's Bench*, at his own ſuit, againſt *G.* a copy of which *G.* was ſerved with in *Eaſter term* 1766, a *declaration* was filed for his, *V.*'s bill of coſts, *judgment* was ſigned by default, and on the 28th of *Auguſt* 1766, a *writ of inquiry* was executed at the *Talbot* in *S.* after which *final judgment* was ſigned; ever ſince *V.* has had *fieri facias* and *writs* againſt *G.* which has obliged *G.* to go out of his neighbourhood, or otherwiſe he would have been ſent to gaol, and has been obliged to lie out of his buſineſs, all which he has entirely loſt, and which has been his entire ruin, and he durſt not venture to be at home, only on a *Sunday*.

Query. What is the beſt method Mr. *G.* can take for ſatisfaction of *V.*? Muſt he move the court of *King's Bench*, wherein *V.*'s action is brought againſt him? Is it adviſeable that *G.* ſhould ſtand in *V.*'s way to be arreſted? or ſhould he pay the money if he can raiſe it? or ſhould he go to *gaol* for a few days?

Opinion.

Opinion. I think the moſt adviſable method for *G.* to purſue in order to obtain ſatisfaction for the very groſs ill uſage he has met with from his attorney, is to move the court of *King's Bench* in the cauſe of *V.* againſt *G.* upon affidavits particularly ſetting forth the circumſtances above ſtated, for a rule to ſtay execution in that cauſe, and that *V.* may anſwer the matters of the affidavits; and if on hearing both ſides, the caſe ſhall appear to be of the complexion here repreſented; I make no doubt, the court will animadvert very ſeverely on Mr. *V.*'s behaviour, and ſee juſtice done to *G.* I ſee no peculiar advantage it will be of to *G.* to permit himſelf to be arreſted.

April 6, 1767. *E. Bearcroft.*

CASE.

Auguſt 20, 1762. *S. H.* by her will of this date duly executed and atteſted, gave and deviſed unto *T. M.* and *E. H.* all her meſſuages lands, tenements and hereditaments whatſoever, with all and every the rights, members and appurtenances thereunto belonging, ſituate, lying and being within the pariſh of *N. E.* or elſewhere, as well leaſehold as freehold, whereof or wherein ſhe then was or ſhould be ſeized, poſſeſſed, or any ways entitled unto, either in poſſeſſion or reverſion, and whereof ſhe had power to diſpoſe, together with all the rents, iſſues, and profits thereof, *To hold* the ſaid meſſuages, lands, tenements, and hereditaments, with the rents, iſſues and profits thereof, unto the ſaid *T. M.* and *E. H.* their heirs, executors, adminiſtrators and aſſigns; *In truſt*, nevertheleſs, that they the ſaid truſtees, and the ſurvivors of them, their heirs, executors and adminiſtrators, ſhould from time to time pay over and apply the rents, iſſues and profits, of all and ſingular the ſaid meſſuages, lands, tenements, hereditaments and premiſes unto her daughter *E.* then the wife of *G. H.* ſince deceaſed, for and during the term of her natural life, for her ſeparate uſe and diſpoſal; and from and after her deceaſe teſtatrix gave and deviſed the ſaid meſſuages, lands, tenements, hereditaments and premiſes, with the appurtenances, unto her grandſon *R. H.* now about 16 years of age, only ſon of the ſaid *G.* and *E. H.* for and during the term of his natural life, and from and after the determination of that eſtate, ſhe gave and deviſed the ſaid premiſes with the appurtenances unto the ſaid *M.* and *H.* and their heirs, during the natural life of the ſaid *R. H. In truſt* to preſerve the contingent eſtates, *&c.*

And from and after the deceaſe of the ſaid *R. H.* ſhe gave and deviſed the ſaid premiſes with the appurtenances, to his firſt and other

ſecond ſons in tail general, and for default of ſuch iſſue to all and every his daughter and daughters in tail general as tenants in common, and in default of ſuch iſſue ſhe gave and deviſed the ſaid premiſes with the appurtenances, to her own right heirs for ever, and the reſidue of her eſtate, monies, ſecurities, goods and chattels, ſhe gave and bequeathed to the ſaid *M.* and *H.* their executors, *&c.* with full power for them or the ſurvivor, his executors, *&c.* to place the ſame out at intereſt on real or other ſecurities, the intereſt and proceed thereof, was to be applied and paid to her the ſaid daughter *E. H.* for her life, for her ſeparate uſe and diſpoſal, and from and after her deceaſe, the teſtatrix gave the reſidue of her ſaid eſtate, monies, *&c.* unto her grandſon *R. H.* his executors and adminiſtrators, and nominated the ſaid *M.* and *H.* executors upon the truſts and for the purpoſes aforeſaid.

At the death of the ſaid *E. H.* the ſaid *G. H.* her huſband as father and not guardian for the ſaid *R. H.* poſſeſſed himſelf of the ſaid eſtates; but unhappily for the child he has not acted as ſuch.

He has cut down and ſold quantities of timber, ſpent the money, and dug up five or ſix acres of the meadow for the ſake of advancing the preſent income, which after a few years will greatly be reduced within the former rent; ſuffered the buildings to decay for want of repairs, and the whole of the eſtates to run to ruin; but his unnatural behaviour extends ſtill farther, he has totally neglected his education, having never kept him to ſchool more than a year and half, which was ſome time ago, and ſince this he has been at home with his father, under the management of a whore he keeps in his houſe of the moſt abandoned kind, both in converſation and indecent behaviour. This wench behaved very ill to him, and did not allow him neceſſaries. about half a year ago he left his father's houſe, and went to his uncle the ſaid *E. H.* his mother's ſiſter's huſband, having no nearer relation, who received and cloathed him, as he was quite ragged, and has maintained and kept him to ſchool ever ſince.

The boy being deſirous that his uncle *H.* ſhould have the care of his perſon and eſtates, and Mr. *H.* being inclined to ſerve him, if he can be indemnified againſt the coſt of the appointment.

Query. Your opinion is deſired, whether the father can by any and by what method be removed from the guardianſhip of his child and the poſſeſſion of his eſtates, and Mr. *H.* be appointed for him, and by whom muſt the expences be defrayed, whether out of the chattels in Mr. *H*'s hands or out of the rents and proceed of the eſtates and chattels, or will the ſame be a lieu or charge on the freehold and leaſehold eſtates, if not, or not payable out of the principal money, but only out of the rents and intereſt, ſhould the minor die before it's

ſatisfied, can it then be obtained? If the application ſhould not be attended with ſucceſs, can Mr. *H.* applying to the court of equity at the boy's inſtance, obtain the coſts of attempting to procure the appointment?

The perſonal eſtate now in Mr. *H.*'s hands amounts to about 300 *l.*

Opinion. The poſſeſſion and managment of the eſtates may be taken from the father, by filing a bill in equity in the name of *R. H.* the infant, by any next friend, his uncle Mr. *H.* may nominate and which bill ſhould be brought againſt the father and Mr. *M.* and Mr. *H.* the truſtees and executors, named in the will of the teſtatrix. And it ſhould be thereby prayed, that the father may account for the rents and profits of the eſtates, received by him, and the money raiſed by timber, and may pay what ſhall be found due from him into the bank, to be placed out in the accountant generals name for the benefit of the infant, and that a receiver may be appointed of the freehold and leaſehold eſtates, with the uſual power to let and ſet the ſame. And as againſt Mr. *M.* and Mr. *H.* praying to have the accounts of the perſonal eſtate taken, and to have the ſame placed out for the infant's benefit.—And that a proper allowance may be made for his maintenance and education for the time paſt ſince he left his father, and for the time to come, until he ſhall attain his age of twenty-one years.—If ſuch bill is filed, Mr. *H.* may propoſe himſelf as receiver, and I think the maſter would appoint him, as I ſee no objection that can be made to him; and I think an allowance would be made for the infant's maintenance and education, and directed to be paid to ſuch perſon as has or ſhall maintain him, and that Mr. *H.*'s coſts and all other parties to the ſuit except the father's ſhould be directed to be paid out of the infants eſtates, ſuch as relate to the real eſtates out of thoſe eſtates, and ſuch as relate to perſonal eſtates, out of the perſonal effects.—And as I conceive Mr. *H.* can run no riſque in caſe the infant ſhould die before he attains twenty-one, as he would have a right (as I conceive) to retain the coſts of ſuch ſuit out of the truſt entruſted in his hands.

Jan. 1, 1768. *E. Hoſkins.*

CASE.

C A S E.

ON Saturday *May* the 23d 1767. four ewes and five lambs were brought to *N*——— P——— by *R. P.* which had been ſtraying in the pariſh of *N*——— two days, and *B.* the p—— keeper had them cryed on Monday the 25th of *May*, in *B*——— *St. P*——— being market day, and took them out of the pound into his orchard in the ſaid pariſh of *N*———, and they lay there till Wedneſday in the morning, when *J. C.* came to *B.* and told him they were his maſter *D.*'s on which *B.* ſaid as follows, he might have them, if he would pay the charges, and told him the charges were, *taking up* 1*s.* *keeping* 1 *s.* *weathering* 4 *d.* *crying* 4 *d.* and *pounding* 2 *d.* if he would take them away then, elſe there would be more charges for keeping them, then he went away, but returned with another man at eight at night, being upwards of twelve hours from his firſt coming, when he aſked *B.* if he would let him have them, which *B.* told him he might have them, if he would pay the money, which was then but 2*s.* 10*d.* *C.* then pulled out the money, and threw down 1 *s.* in one place, 1*s.* in another, and 1 *s.* in the third place, and told him to take what he would, *B.* then told him he would not ſtoop to him, or his maſter, but if he would give him the money up into his hand, he would take it; but *C.* refuſed and made many words; *B.* told him if the ſheep were not taken away that night, he would be paid ſixpence more for keeping, and that he would carry them the next morning to the duke of *B.*'s at *A*———, *C.* after ſome time took up his money and went away and never returned again, and the ſheep was now in *A*——— park belonging to his grace the duke of *B*———, leſſee under the crown of the manor of the ——— of *N*——, parcel of the honor of *B*—— and of the dutchy of *C*——, and alſo ſteward and bailiff of the ſame manor, and by 1*d.* leaſe entitled to one half of the value of all waifs and ſtrays ariſing from the ſaid manor, and the crown to the other half.—Part of *A*——— park lies not three miles from *N*—— pound.—Afterwards *D.* ſerved *B.* with a copy of a *latitat*, but has not declared thereon.

On the fourth of *Auguſt*, ——, and not before, *D.* applied to the ſheriff of *H*— for a replevin warrant, which was granted to him, and directed to the conſtables of *N*———, and *W. P.* one of the ſheriff's bailiffs or officers, but the ſheep being out of the pariſh of *N*——, *D.* has applied to the ſheriff for a return that they are eloined, which at preſent the ſheriff has refuſed, being told where the ſheep now are.

It is apprehended, that *D.* will apply ſo as to get a writ of withernam, or elſe he will enter his grace's park, which lies in two coun-

ties and three pariſhes, but not in the pariſh of *N.* ſo that when they come to take the ſheep, it may ſo happen, that they may be in a different county.

Since the ſheep have been in *A*——— park, one of the lambs is ſtolen or ſtrayed, ſo as not to be found, and one of the ſheep is dead of the rot.

N. B. Since the lamb was ſtolen, the other ſheep and lambs have been appraiſed by proper judges, and a value ſet on them.

Query 1ſt. Is the tender made by *C.* as before ſtated a good tender, and can *B.* as pound keeper, under a certain written appointment, juſtiy the detaining of the ſheep and lambs? If he can, muſt he juſtify as a ſervant to the crown, or to the duke of *B.*

Opinion. The tender is very ſufficient according to the manner of it, and it was a very great fault in *B.* in not taking the money, when he might by ſtooping have had it; the tender appears to be ſufficient in quantity, for *B.* could not, as I apprehend, demand any thing more than for the keeping and calling, tho' I doubt his right to the latter matter, and I am of opinion he could not demand any thing for the taking up of the eſtray or weathering it, and that he cannot juſtify the retaining the ſame after the tender.

Query 2d. As the lamb that was loſt was kept in *A*——— park, which is pailed round, where the reſt that are living now are; will *B.* or the duke of *B.* or either of them be anſwerable for the loſs of it, or any of the others which are dead?

Opinion. I think he will be liable to anſwer for the lamb loſt, and the ſheep dead, becauſe his denial to reſtore them was a converſion, and the value muſt be fixed from that time.

Lincolns Inn, 10th *Dec.* 1762. *E. F.*

CASE.

C. P. Eſq; by his will dated the 3d. *Feb.* ——, after bequeathing an annuity of 33 *l.* to his ſiſter *J. P.* for life, payable out of his eſtat s at *C*———, *W*—— *W*—— and *H*——, gave to *A. P.* ſon of his brother *J. P.* and to the heirs of his body, all thoſe his laſt mentioned eſtates, and if he died under age, the teſtator deviſed, the ſame to *A. P.* ſon of his brother *A. P.* and the heirs of his body, and in caſe both nephews ſhould die under age, then the teſtator deviſed the ſaid eſtates to his brother *I. P.* and his heirs.

A. the ſon of *I. P.* hath attained the age of twenty-one but is not he heir at law of teſtator.

Query. Can *A.* the ſon of *I. P.* by levying a fine, create a fee, or is a recovery neceſſary for that purpoſe?

Opinion. *A.* the ſon of *I.* being only tenant in tail, and not having the immediate reverſion in fee in himſelf, I am of opinion that a recovery is abſolutely neceſſary to procure him the fee ſimple of the eſtates deviſed.

10th, *Feb.* 1768. *Wm. Rivett.*

C A S E.

4th *March*, 1765. INDENTURE between *W. G.* and *E.* his wife of the one part, and *I. T.* and *G. W.* of the other part, *reciting* that the eſtate and effects the ſaid *E. G.* was poſſeſſed of at the time of her marriage with the ſaid *W. G.* which was then lately ſolemnized, were eſtimated at the ſum of 200 *l.* after payment and ſatisfaction of her debts, and that the ſaid *W. G.* previous to the ſaid marriage, conſented and agreed to ſettle the ſaid 200 *l.* upon the truſts hereinafter mentioned, but being then incapable of advancing the ſame, did by his bond of equal date therewith, engage for the payment thereof to the ſaid *T.* and *W.* on the 4th of *September* with intereſt at *four per cent.* On which ſecurity *T.* and *W.* by the direction of *E. G.* were to permit *W. G.* to continue it during her life. *It is therein witneſſed, declared and agreed*, that the ſaid 200 *l.* ſhould remain, continue, and be, to and upon the following truſts, (that is to ſay) *In truſt* for all and every the three children of the ſaid *E. G.* by *I. B.* her former huſband, namely *A. B. E. B.* and *S. B.* in equal ſhares as tenants in common, at ſuch time or times as the ſaid *E. G.* notwithſtanding her coverture ſhould by deed or inſtrument in writing duly executed and atteſted, direct or appoint. And in default of ſuch appointment, at the death of the ſaid *E. G. In truſt* for all and every of the ſaid *A. B. E. B.* and *S. B.* in equal ſhares as tenants in common, to be divided betwixt them at the death of ſaid *E. G.* *And it was* thereby declared and agreed by and betwixt all the ſaid parties thereto, That until ſuch appointment ſhould be made, or until the deceaſe of the ſaid *E. G.* it ſhould, and might be lawful for the ſaid *T.* and *W.* or the ſurvivor, his executors, adminiſtrators and aſſigns, to put, place and continue at intereſt, the ſaid 200 *l.* on good real and perſonal ſecurities, (but with the conſent and approbation of the ſaid *E. G.*) the intereſt and produce whereof ſhould from time to time be paid to and received by ſuch perſon or perſons and for ſuch uſes and purpoſes and in ſuch parts and proportions, manner and form, as

the

the ſaid *E. G.* ſhould from time to time, and at any time or times, during her life, notwithſtanding her coverture, and whether ſhe ſhould be covert, or ſole by any writing or writings under her hand, direct or appoint, to the intent that the ſame or any part thereof, might not be at the diſpoſal, or ſubject, or liable to the controul, or intermedling of the ſaid *W. G.* but only at her own ſole and ſeparate diſpoſal. And in default and until ſuch direction and appointment to the proper hands of the ſaid *E. G.* or otherwiſe ſhould permit and ſuffer her to receive and take the ſame to and for her own ſole and ſeparate uſe and benefit, whoſe receipt under her hand, ſhould from time to time, notwithſtanding her coverture, be a ſufficient diſcharge to the perſon or perſons who ſhould ſo pay the ſame for ſo much thereof for which ſuch receipt ſhould be given.

This deed was executed by all the parties and properly atteſted.

12th *July*, 1765. INDENTURE between the ſaid *W. G.* and *E.* his wife of the one part, and the ſaid *I. T.* and *G. W.* of the other part, *reciting* the laſt deed, and that the ſaid *I. B.* died inteſtate, and that *A. B. E. B.* and *S. B.* became entitled to the two-thirds of his perſonal eſtate, amounting to upwards of 200 *l.* alſo that it was agreed that the ſaid 200 *l.* ſecured by the ſaid *W. G.* on his bond, was intended, and ſhould go and be accepted for the ſaid *A. B. E. B.* and *S. B.* in part of their diſtributive ſhares of their ſaid father's effects; and alſo that the money ſecurities for money, goods, chattels and effects mentioned and contained in a ſchedule therein referred to, were accepted by the ſaid *T.* and *W.* at the ſum of 206 *l.* 15 *s.* 11 *d.* in full diſcharge of the ſaid 200 *l.* due from the ſaid *W. G.* on the ſaid bond, and as far as they lawfully might in ſatisfaction of the diſtributive ſhares of the ſaid *A. B. E. B.* and *S. B.* of their father's effects, it appearing to be ſufficient for that purpoſe, *It is witneſſed*, that in purſuance of the ſaid agreement, and for the purpoſe aforeſaid, the ſaid *E. G.* by virtue of and under the power and authority in and by the ſaid therein recited indenture, all and every other power and authority in her then veſted or repoſed, did direct and appoint the ſaid 200 *l.* ſhould from the date thereof remain, continue and be in truſt for the ſaid *A. B. E. B.* and *S. B.* in equal ſhares as tenants in common, *And it is therein further witneſſed*, that for payment of the ſaid 200 *l.* and ſatisfaction of the remainder of the diſtributive ſhares of the ſaid *A. B. E. B.* and *S. B.* in their ſaid father's effects, and alſo in conſideration of 5 *s.* paid by the ſaid *T.* and *W.* to the ſaid *W. G.* did grant, bargain, ſell, aſſign and deliver to the ſaid *T.* and *W.* All and ſingular, the monies, ſecurities for money, goods, chattels and effects, mentioned and contained in the ſchedule thereto annexed and above referred to, and every part and parcel thereof, with the appurtenances, *To hold* to the ſaid *T.* and *W.* their executors, adminiſtrators and aſſigns for ever, but

but *in truſt* to keep and preſerve or manage or diſpoſe thereof as they ſhould ſee proper, for the uſe, benefit and advantage of the ſaid *A. B. E. B.* and *S. B.* their executors, adminiſtrators and aſſigns.

The ſaid *E. G.* during her widowhood, took out letters of adminiſtration, in the proper eccleſiaſtical court for the dioceſs, to the effects of the ſaid *I. B.* her former huſband.

The children are all upwards of ten years old.

Query. If the mother has an appointment in the eccleſiaſtical court of the dioceſs, of the guardianſhip of her ſaid children, will the truſtees be well juſtified in delivering over the monies and goods to her, and what diſcharge ſhall they have?

Opinion. I am of opinion, that if the mother ſhould be appointed guardian of her children in the eccleſiaſtical court, the truſtees will not be juſtified in delivering over the monies and goods to her, but that they muſt preſerve and keep the ſame for the benefit of the children, *on the truſts* repoſed in them, and that the mother can give them no ſufficient diſcharge.

Feb. 12, 1768. *R. Perryn.*

C A S E.

IN *the name of* GOD *Amen.* I *W. C.* of —— Gent. being ſick of body, but of ſound and diſpoſing mind, memory and underſtanding, DO make my will in manner following, (that is to ſay) Firſt, I give and bequeathe unto my kinſman *I. C.* natural ſon of my niece *M. C.* ALL that my eſtates called *S*—— lying in the pariſh of *N*—— *B*—— in the ſaid county, which I hold by a long leaſe, *And* alſo ALL that my other leaſehold eſtates called *C*—— *B*—— and *P*—— in *N*—— *B*—— aforeſaid, *To hold* to him the ſaid *I. C.* his heirs and aſſigns, for and during all the term, *&c.* (as in folio 85, only writing initial letters for the names) declare this to be my laſt will and teſtament. *In witneſs* whereof, I the ſaid *W. C.* have hereunto ſet my hand and ſeal, the 30th day of *May*, in the year of our lord 1763 *W. C.* † ſigned, ſealed, publiſhed and declared by the ſaid teſtator *W. C.* as and for his laſt will and teſtament, in the preſence of us, who at his requeſt, in his preſence, and in the preſence of each other have ſubſcribed our names as witneſſes thereto.

P. C. W. M. S. S. *W. C.*

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The teſtator died ſeized in fee ſimple of ſeveral eſtates and was poſſeſſed of leaſehold eſtates for years, determinable on lives.

Query. If the reſidue paſſes the fee ſimple eſtates to *R. N.* in fee, no fee ſimple being deviſed in the will?

Opinion. I am of opinion, that by the reſiduary deviſe, *R. N.* takes the fee ſimple and inheritance of all the teſtators freehold eſtates.

24th *March*, 1768. *Wm. Rivett.*

CASE.

E. Being leſſee of a houſe in St. *M.*'s ſtreet under the uſual covenants aſſigned the leaſe for a valuable conſideration to *F. E.*

About 23d. *Jan.* laſt *F. E.* was arreſted and carried to the *King's Bench* priſon, and having remained there two months, on the 24th *March*, a commiſſion of bankrupt iſſued out againſt him, and he was declared bankrupt, the act of bankruptcy being the two months impriſonment.

About the latter end of *Feb. E.* ſent his wife to one *W. E.* a debtor to him in about 20 *l.* upon a book debt, and with her a receipt for the debt, in exchange for this *W. E.* ſent his note of hand payable to the bankrupt or order, three months after date.

With this note indorſed by the bankrupt, the wife was ſent to the agent for the landlord of the houſe, who gave a receipt for it to this effect, *viz.* which when paid will be in full for half a years rent due at *Chriſtmas* then laſt.

At the time of the bankruptcy, there were not any goods upon the premiſes, but the aſſignees under the commiſſion having ſince ſold the leaſe, the houſe is now furniſhed, and the note not being paid, the landlord has threatned a diſtreſs, not only for the rent accrued ſince the bankruptcy, but for the rent for which the note was intended as a diſcharge, and which had accrued before the bankruptcy. The aſſignees are ready to pay the rent accrued ſince the bankruptcy, and it is not doubted but that *W. E.* and the agent for the landlord had notice both of the impriſonment and the inſolvent circumſtances of *F. E.*

Query. Can the landlord recover againſt *W. E.* the money due upon this note, if he can, will *W. E.* be liable to pay it again to the aſſignees, or can the landlord make his election, and

and by giving up the note to the assignees, maintain a distress for, or recover by ejectment the rent due previous to the bankruptcy and the issuing of the commission?

Opinion. There is no doubt but the landlord may distrain the goods of the vender, unless the receipt which he gave to each be a bar to it. The note for which that receipt was given, was not transferred to him by the indorsement; therefore I understand the receipt to be an acknowledgement of satisfaction only in the case of that note being paid voluntarily, which for want of an indorsment by a person having power to assign, he could not compel the payment of. I consider *E.* as a bankrupt from the day of the arrest. If the landlord may distrain for the rent, the assignees must make it good to their vendee. But I think the landlord must in such case, give up the note to the assignees, who might maintain trover for it. The note being in possession of the assignees, they may recover the 20*l.* against *W. E.* if they chuse to sue upon that rather than the book debt; but they cannot have both. Upon the whole therefore, I think that the justice of the case is, that the assignees should pay the landlord his rent, and receive the 20*l.* of *W. E.*

1st *Nov.* 1767. *E. Thurlow.*

CASE.

THIS Indenture *tripartite* made the twelfth day of *May*, in the 25th year of the reign of our sovereign Lord *George* the second, the grace of God, of *Great Britain*, *France* and *Ireland* King, ender of the Faith, and so forth, *And* in the year of our Lord 2 *Between T. D.* of *S*——— *C*——— in the county of *S*———, of the first part, *W. E.* of *A*——— in the county aforesaid, of the second part, and *W. C.* of *D*——— in the parish of *C*——— ne county of *S*——— gent. and *I. T.* of *A*——— aforesaid, he third part, *Whereas*, in and by indentures of *L.* and *R.* bearing respectively the 28th and 29th days of *January* last past and e or mentioned to be made, between *R. F.* of *H* ——— in the nty of *S*——— miller, of the one part, and the said *W. C. T. D.* and *W. E.* gent. of the other part recited therein, as herein is recited, or to the like effect. *That Whereas*, the said *R. F.* considerably indebted to the said *W. T. D. I. T.* and *W. E.* h more than he was able to pay, and did agree to convey to, *trust* for them the equity of redemption of all and singular the nises therein and herein after mentioned, in part of satisfaction he said debts, *It is witnessed, That* for the consideration aforesaid,

and also in consideration of the sum of 131 *l.* of good and lawful money of *Great Britain* in hand, well and truly to be paid by the said *T. D.* to *C. S.* and *I. S.* (executors of the last will and testament of *W. S.* late of *B*———, gent. deceased) being the same consideration monies mentioned to be paid them by the said *T. D.* in and by a certain indenture tripartite, bearing even date with the said recited release, *and also* in consideration of the sum of 5 *s.* lawful money of *Great Britain*, in hand, well and truly paid by the said *T. D.* to the said *R. F.* before the sealing and delivery thereof, and for other valuable considerations, him the said *R.* thereunto moving, *did* grant, bargain, sell, alien, release and confirm unto the said *T. D.* and his heirs, *All* that *mill-house*, *water-mill*, and also that *parcel of copyhold* called the *H*— containing by estimation two acres, (be the same more or less) and also *one close* of pasture called *D*—— *L*—— lying near unto the said mill, containing by estimation, two acres, (be the same more or less) with all and singular the appurtenances unto the said mill-house and water-mill belonging or in anywise appertaining, situate, lying and being within the parish of *H*——— aforesaid, and then were in the possession of the said *R. F.* his under-tenants or assigns, together with all ways, paths, pastures, waters, water-courses, mill ponds, mill wares, mill-stones, castarns, flood-hatches, profits, commodities, advantages, emoluments and hereditaments to the said premisses belonging or in anywise appertaining, *and* the reversion and reversions, remainder and remainders, rents, issues, profits and services of all and singular, the said thereby granted premisses and part and parcel thereof, *and* all the estate, right, title, just use, possession, freehold inheritance, trust, equity of redemption, possibility, challenge, claim and demand whatsoever, of him the said *H.* of, in, to and out of the said premisses and every part or parcel thereof, *And* all deeds, evidences and writings touching and concerning the said premisses only, or only any part thereof, *to be had and holden* unto the said *T. D.* his heirs and assigns for ever, and to and upon the uses, trusts, ends, intents and purposes therein and herein after mentioned expressed and declared of and concerning the same, (that is to say) *in trust*, to sell and dispose of the same with all convenient speed, and by and with the monies arising by and out of the rents, issues, and profits of the said premisses, and by sale thereof, in the first place, to pay and satisfy all the principal and interest monies, to be paid to the executors of the said *W. S.* on a mortgage thereof made to the said *W. S: and* further and immediately after paying and satisfying the same *upon this further trust*, to pay and divide all the monies remaining in the hands of the said *T. D.* to and amongst them the said *W. G. T. D. I. T.* and *W. E.* equally between them, share and share alike, in proportion and according to the several and respective sums of money then to them respectively due and owing from the said *R. F. and* to, for and upon no other use, intent or purpose whatever, (as in and by the said recognizance, reference being thereunto had may more fully and at large appear) *And whereas* the said

ſum of 131 *l.* is not yet paid by the ſaid *T. D.* to the ſaid *C. S.* and *I. S.* executrix, and executrix of the ſaid *W. S.* deceaſed, but remains ſtill unſatisfied, *And whereas*, the ſaid *W. C. I. T.* have contracted and agreed with the ſaid *T. D.* and *W. E.* to pay unto the ſaid *C. S.* and *I. S.* the ſaid ſum of 131 *l.* and the growing intereſt thereon due on mortgage as aforeſaid, *and to give to* the ſaid *T. D.* and *W. E.* the further ſum of 41 *l.* 10 *s.* *for the abſolute purchaſe* of the fee ſimple and inheritance of the ſaid lands abovementioned. *Now this indenture witneſſeth, That* for and in conſideration of the ſaid ſum of 131 *l.* of lawful money of *Great Britain* and the growing intereſt thereon, to the ſaid *C. S.* and *I. S.* in hand, paid by the ſaid *W. C.* and *I. T.* by and with the conſent and direction of the ſaid *T. D. W. E.* and *in purſuance of the agreement above recited*, the receipt whereof is hereby acknowledged, *and alſo* in conſideration of the ſaid ſum of 48 *l.* 10 *l.* of like lawful money of *Great Britain* to the ſaid *T. D.* and *W. E.* in hand, alſo, well and truly paid by the ſaid *W. C.* and *I. T.* the receipt whereof they the ſaid *T. D.* and *W. E.* do and each of them doth hereby acknowledge, and thereof, and of every part thereof do and each of them doth acquit and diſcharge the ſaid *W. C.* and *I. T.* their heirs, executors and adminiſtrators, by theſe preſents *he the ſaid T. D.* at the inſtance and requeſt, and by the direction and appointment of the ſaid *W. E.* teſtified by his joining herein, and ſigning and ſealing hereof, *hath granted, bargained* and ſold, aliened, releaſed and confirmed, *and* by theſe preſents does fully, freely and abſolutely grant, bargain ſell, alien, releaſe and confirm, unto the ſaid *W. C.* and *I T.* (in their actual poſſeſſion, now being by virtue of a bargain and ſale to them thereof made for one year by indenture bearing date the day next before the day of the date of theſe preſents, and by force of the ſtat. for transferring uſes into poſſeſſion) and to their heirs and aſſigns for ever, *All* that the aforeſaid mill-houſe, water-mill, *and* all that parcel of ground allotted the *H.* containing by eſtimation two acres, (be the ſame more or leſs) *and alſo* one cloſe of paſture, called *D*——— *C*——— lying near unto the ſaid mill, (be the ſame more or leſs) with all and ſingular the appurtenances unto the ſaid mill-houſe and water-mill belonging or in anywiſe appertaining, *all* which ſaid premiſſes are ſituate, lying and being within the pariſh of *H.* aforeſaid, and late were in the poſſeſſion of the ſaid *R. F.* his under-tenants or aſſigns, together with all ways, paths, paſtures, waters, water-courſes mill ponds, mill wares, mill-houſe, caſtarns, flood-hatches, profits, commodities, advantages, emoluments and hereditaments whatſoever to the ſaid premiſſes belonging, or in anywiſe appertaining, *and* the reverſion and reverſions, remainder and remainders, rents, iſſues, profits and ſervices, of all and ſingular the ſaid hereby granted premiſſes, and every part and parcel thereof, *and* all the eſtate, right, title, intereſt, uſe, poſſeſſion, freehold inheritance, truſt, equity of redemption, poſſibility, challenge, claim and demand whatſoever, of them the ſaid *T. D.*

and *W. E.* of, in, to and out of the ſame premiſſes, and every part and parcel thereof, *and* all deeds, evidence and writings touching and concerning the ſaid premiſſes only, or only any part thereof, *To have and to hold* all and ſingular, the ſaid mill-houſe, water-mill, cloſes, lands, hereditaments and premiſſes herein before granted or meant, mentioned or intended ſo to be, with the appurtenances, unto the ſaid *W. C.* and *I. T.* their heirs and aſſigns, *to* the only proper uſe and behoof of the ſaid *W. C.* and *I. T.* their heirs and aſſigns for ever. *To be holden* of the chief lord or lords of the fee of the ſaid premiſſes, by the rents and ſervices therefore due, and of right accuſtomed. *And* the ſaid *T. D.* and *W. F.* do for themſelves ſeverally and for their ſeveral heirs and adminiſtrators, and for every of them, covenant and grant to and with the ſaid *W. C.* and *I. T.* their heirs and aſſigns by theſe preſents, *that* they the ſaid *W. C.* and *I. T.* their heirs and aſſigns and every of them, ſhall and lawfully may from time to time, and at all times hereafter peaceably and quietly, have, hold, uſe, occupy, poſſeſs and enjoy, all and ſingular, the ſaid hereby granted premiſſes, with the appurtenances, and the rents, iſſues, profits and commodities thereof ariſing, accruing and growing, to have, receive and take *to and for* their own *ſeparate* uſe and uſes, without any manner of let, ſuit, trouble, eviction, ejection, moleſtation, interruption, hindrance, or denial whatſoever, of or by the ſaid *T. D.* and *W. E.* or either of them, their or either of their heirs or aſſigns, or any other perſon or perſons whatſoever lawfully claiming or to claim the ſame or any part thereof, by, from, or under him, them or any, or either of them; *And alſo*, that he the ſaid *T. D.* hath not made, done or committed, or wittingly or willingly ſuffered to be made, done or committed any act, injury, or thing whatſoever, whereby or wherewith the ſaid premiſſes above mentioned, or any part thereof are, is, ſhall, or may be charged or incumbered, in title or eſtate, or otherwiſe howſoever by his means or procurement only, *And laſtly*, that the ſaid *T. D.* his heirs and aſſigns, ſhall and will at all times hereafter, within the ſpace of twenty years next enſuing the date hereof, at the reaſonable requeſt, and at the proper coſts and charges in the law, of the ſaid *W. C.* and *I. T.* their heirs and aſſigns farther make, do acknowledge, levy, ſuffer and execute, or cauſe and procure to be made, done, acknowledged, levied, ſuffered and executed, *all* and every ſuch further and other lawful and reaſoneble act and acts, deed and deeds, conveyancies, aſſignments, and aſſurances in the law whatſoever, of the ſaid premiſſes (be it by fine or fines, or any other meaſure of record or otherwiſe howſoever) for the further, better, more perfect and abſolute aſſuring, ſure making and conveying of the ſaid premiſſes with the appurtenances unto the ſaid *W. C.* and *I. T.* their heirs and aſſigns, that is, according to the limitation, or by their counſel learned in the law, ſhall in that behalf be reaſonably deviſed, adviſed, tendered or required, *In witneſs* whereof, the ſaid parties

above

above named have to theſe preſents immediately ſet their hands and ſeals, the day and year firſt above written.

Executed by all parties.

Note. The mortgagee was paid his 152 *l.* by *C.* and *T.* as were *D.* and *E.* the 48 *l.* 10 *s.* in full for their debts, but whether *C.* and *T.* paid it in equal moieties cannot be diſcovered. The eſtate was preſumed worth more than the above conſideration money, and that the over value was intended as a ſatisfaction to *C.* and *T.* of their debts, otherwiſe they would have had no ſhare with the other creditors, *D.* and *E.* but *D. C.* and *T.* are all dead, and no information can be obtained of this dark tranſaction. The debts due from the eſtates were not equal, ſo that he that had the moſt money due to him paid as much of the mortgage debt, and 48 *l.* 10 *s.* as the other, the conſideration was unequal, but as is before ſaid, no account can be given of it.

You'll obſerve in the covenants, *C.* and *T.* were to receive the profits to and for their own *ſeparate* uſe and uſes.

C. and *T.* received the profits in equal moieties till the death of *C.* which happened about two years ago, but never gave any receipt for it, and *T.* dying ſoon after, the rents were received in like manner by their deviſees.

Query. Whether *C.* and *T.* were tenants in common, or joint tenants, and to whom it now belongs? If a joint tenancy, no act was done by *C.* or *T.* to deſtroy it?

Opinion. I am of opinion, that by the limitation in the purchaſe deed, *C.* and *T.* in conſtruction of law, muſt be deemed joint tenants, and unleſs ſomething more appears on producing of their wills, I think the court of Equity will not interpoſe.

Query. If *T.* received the whole rent after the death of *C.*? And if he deviſed more than one moiety of the premiſſes?

T. received no rent after the death of *C.*

He has deviſed the whole to his wife for her life, with remainder over in fee.

Opinion.

Opinion. As *C.* made no ſeverance of the joint tenancy, he could not deviſe any part of the premiſſes to *R. W.* by his will; and as *T.* who ſurvived, hath deviſed the whole of the premiſſes by deſcription to his wife, with remainder in fee to *A. T.* ſubject to an executory deviſe over, I conceive thoſe who claim under *I. T.* are well entitled to this eſtate.

April 6, 1768. *Wm. Rivet.*

CASE.

IN the Name of God *Amen*, I *W. C.* of *D*——— in the pariſh of *C*——— in the county of *S*—— gent. being ſick in body, but of ſound diſpoſing mind, memory and underſtanding, do make my will in manner following, (that is to ſay) *Firſt*, I give and bequeath unto my kinſman *I. C.* of *F*— in the pariſh of *B*— in the ſaid county, *All* that my meſſuage or tenement and garden, with the appurtenances, which I hold by a long leaſe. *And alſo, all that* my leaſehold eſtates called *C*——— *B*——— and *P*———, in North *B*——— aforeſaid, *to hold* to him the ſaid *I. C.* his heirs and aſſigns, for and during all the term and eſtates I have therein. *Alſo* I give and bequeath unto my two kinſmen *W.* and *E.* ſons of my kinſman *E. C.* late of *M*——— in the ſaid county, deceaſed, the ſum of 500 *l.* a-piece to be paid them by my executor, when they ſhall reſpectively attain the age of twenty-one years. But in caſe either of them ſhall die before he attains that age, *then* I give the legacy of him ſo dying to the ſurvivor of them. *Alſo*, I give and bequeath unto my three nieces living at *M*——— or thereabouts, ſiſters of my nephew *W. C.* of *M*—— aforeſaid, deceaſed, the ſum of 100 *l.* a-piece, to be paid them reſpectively within one year next after my deceaſe, by my executor. *Alſo* I give and bequeath unto *M. H.* of Weſt *L*—— in the ſaid county, yeoman, the ſum of 40 *l.* to be paid him by my ſaid executor within twelve months next after my deceaſe. *Alſo* I give and bequeath unto my ſervant *I. C.* now living with me, the ſum of 10 *l.* to be alſo paid within one year next after my deceaſe. *Alſo* I give and bequeath unto *I. E.* of *M*——— aforeſaid, the ſum of 100 *l.* to be paid him by my ſaid executor within twelve months next after my deceaſe. *Alſo* I give and bequeath unto *I. W.* and *A.* ſons and daughter of *H. C.* of *C*——— in the ſaid pariſh of *C*———, the ſum of 100 *l.* a-piece, to be reſpectively paid them when they ſhall reſpectively attain the age of twenty-one years *Alſo* I give and bequeath unto *S. W.* of *B*—— tanner, the ſum of 10 *l.* to be paid him by my ſaid executor within one year next after my deceaſe. *Alſo* all the reſt and reſidue of my eſtates both real and perſonal, goods, chattels and effects whatſoever and whereſoever not herein before given and diſpoſed, I give, deviſe and bequeath unto my kinſman *R. N.* of *M*—— within the pariſh of *H*—— in the county

county of *S.* gent. *To hold* to him the ſaid *R. N.* his heirs, executors, adminiſtrators, and aſſigns, for ever; charged and chargeable nevertheleſs with the payment of the ſeveral legacies herein before by me given. *And* I do hereby nominate, conſtitute and appoint, the ſaid *R. N.* whole and ſole executor of this my will.

And laſtly, I do hereby revoke all former and other wills by me at any time heretofore made; and do declare this to be my laſt will and teſtament. *In witneſs* whereof, I the ſaid *W. C.* have hereunto ſet my hand and ſeal, the 30th day of *May*, in the year of our Lord 1763, *W. G.* Signed, ſealed, publiſhed, and delivered, by the teſtator *W. C.* as and for his laſt will and teſtament, in the preſence of us, who, at his requeſt, in his preſence, and in the preſence of each other, have ſubſcribed our names as witneſſes thereto.

P. C. W. M. S. S.

May 30, 1763. *Wm. Clothers.*

IN the name of God, *Amen.* I, *I. T.* of *A*———, in the county of *S*———, yeoman, being in perfect health, and of ſound and diſpoſing mind, memory, and underſtanding, do make my will in manner following; (that is to ſay), *Firſt*, I give and bequeath unto my two *grand-daughters*, *M.* and *D.* one annuity or clear yearly ſum of 5*l.* a-piece, for and during, and until they ſhall reſpectively attain the age of twenty-one years, or marriage, which ſhall firſt happen; to be iſſuing and payable out of my freehold eſtate at *L*————, in the county of *S*————; and I do direct the ſaid annuity ſhall be received by Mr. *R. N.* of *L*———, and Mr. *T. U.* of *L*————, to be by them paid and applied to, and for the uſe and benefit of, my ſaid two grand-daughters, for their education and maintenance. *Alſo*, I give and bequeah unto my ſaid two grand-daughters the ſum of 5*l.* a-piece, to be paid them when they ſhall reſpectively attain the age of twenty-one years; and in caſe either of them, my ſaid grand-daughters, ſhall die before ſhe ſhall attain the age of twenty-one years, *Then* I will and direct, that her legacy of 50*l.* ſhall be paid to the ſurvivor; but if both my ſaid children ſhall die before that age, *Then* I will and direct the ſaid annuities to ceaſe, and the ſaid legacy to become lapſe. *And* I do hereby charge and clogg, my ſaid freehold eſtate and lands, ſituate at *L*———— aforeſaid, with the payment thereof. *Alſo*, I give and deviſe *All* that my ſaid freehold eſtate and lands, ſituate at *L*———— aforeſaid, (charged and chargeable with the ſaid annuities and legacy), unto *A. T. B.* daughter of *M.* my now wife,

late *M. B. To hold* unto the ſaid *A. T.* her heirs and aſſigns, for ever. But in caſe the ſaid *A. T.* ſhall happen to die before ſhe ſhall attain the age of twenty-one years without iſſue of her body, *Then*, I give and deviſe the ſaid eſtate and lands unto my ſaid two grand-daughters, *M.* and *A. D.* their heirs, and aſſigns, for ever, as tenants in common. *Alſo* I give, deviſe, and bequeath, unto the ſaid *A. T. All* that my cloſe of ground, called *C*——— *M*———, ſituate in the pariſh of *C*——— *C*——, in the county of *S*———, *To hold* unto her the ſaid *A. T.* her heirs, executors, and aſſigns, for all the term, and intereſt which I ſhall have therein at the time of my deceaſe. *Alſo* I give, deviſe, and bequeath, unto my wife *M. All* that my freehold eſtate and lands, ſituate at *L*———, in the county of *S*———, charged and chargeable, nevertheleſs, with the payment of all ſuch monies as ſhall be due thereon, by way of mortgage, or otherwiſe, at the time of my deceaſe, *To hold* unto my ſaid wife, and her aſſigns, for and during the term of her natural life, if ſhe ſhall ſo long live and continue my widow and unmarried. *And* from and after her deceaſe, or marriage, which ſhall firſt happen, I give and deviſe the ſaid eſtate and lands at *L*——— aforeſaid unto the ſaid *A. T.* her heirs, and aſſigns, for ever. But in caſe the ſaid *A. T.* ſhall happen to die before ſhe ſhall attain the age of twenty-one years, and without iſſue of her body, *Then* I give, deviſe, and bequeath the ſame eſtate and lands at *L*——— aforeſaid, unto my ſaid two grand-daughters, *M.* and *A. D. To hold* to them, their heirs, and aſſigns for ever, as tenants in common. *Alſo* I give and bequeath, unto each of them my ſaid grand-daughters, *M.* and *A. D.* a bed, bedſtead, and furniture thereunto belonging, which was brought with them; and alſo a bell-metal pot each, and three pewter diſhes each: *Alſo*, I give unto my ſaid grand-daughters *M. D.* my clock. *Alſo*, *all* the reſt of my perſonal eſtate, goods, chattels, and effects whatſoever, and whereſoever, I give, deviſe, and bequeath unto my ſaid wife *M.* whom I nominate, conſtitute, and appoint executrix of this my will. *And* I do hereby nominate and appoint my friends the ſaid *R. N.* and *T. U.* to be guardians and curators of the ſaid *A. T.* during her minority, and to be truſtees of, and to ſee this my will duly performed. *And laſtly*, I hereby revoke all former and other wills, by me at any time heretofore made, and do declare this to be my laſt will and teſtament. *In witneſs* whereof, I have thereunto ſet my hand and ſeal, the 26th day of *September*, 1765, *I. T.* Signed, ſealed, publiſhed, and declared, by the ſaid teſtator as and for his laſt will and teſtament, in the preſence of us, who, at his requeſt, in his preſence, and in the preſence of each other, have ſubſcribed our names as witneſſes thereto,

M. M. M. . M. S. S.

September 26, 1765. *I. Tothill's will.*

CASE.

CASE.

IN 1610, the inhabitants of *T*———, at their own expence, and for their own convenience, erected a chapel within the hamlet; but before it was conſecrated or opened, an agreement was entered into by the then vicar of *G*——— of the one part, and ſeveral of the inhabitants of the other part, touching the rights of the mother church.

This agreement is regiſtered in the biſhop of *London*'s regiſtry, with the act of conſecration, and without which the biſhop would not have conſecrated the chappel.

The church of *T*——— is a very ancient building, and now wants a very large and thorough repair; and the building in and about *T*———, and with them the inhabitants, having of late years greatly increaſed, the church really ſtands in need of an enlargement, ſo as that the inhabitants may be decently accommodated.

On the 10th of *July* 1770, at a veſtry held for *T*———, purſuant to due notice publiſhed in the church on the Sunday preceding, it was the unanimous opinion of the inhabitants preſent, that the pews and other parts of the church were in want of conſiderable repair, and that there was not a ſufficient number of ſeats to accommodate the pariſhioners, therefore that the churchwarden ſhould appoint proper ſurveyors to prepare a plan and eſtimate, and that he ſhould give notice to the churchwarden of *T*——— ſide to employ a ſurveyor on behalf of *G*——— diviſion, to attend with the ſurveyor on the *T*——— ſide, to examine and report their opininns concerning the repairs and increaſe of ſeats.

R. T. Eſq; was appointed ſurveyor, and notice of the reſolution of this veſtry was communicated to the churchwarden of *T*———.

On the 5th of *September*, 1770, at a veſtry held for *T*———, t was ordered, That the churchwarden and others ſhould be leſired to attend the churchwarden of *G*———, and inquire what repairs were purpoſed. And it was reſolved, that Mr. *A.* ſhould be appointed ſurveyor on the *T*——— ſide, to meet the *G*——— ſurveyor.

The ſurveyors met, and a ſurvey and eſtimate being made, another eſtry for *G*——— was held on the 1ſt of *November*, 1770, purſuant o due notice, to take into conſideration the report of the ſurveyors,

reſpecting the neceſſary repairs and enlargement of the church. At this meeting a paper, intituled, "An eſtimate of the expence of the repairs which are abſolutely neceſſary to be done in *G*———— church," ſigned by the three ſurveyors, and amounting to 2000*l.* was read.

It was thereupon reſolved, as the opinion of the inhabitants, whoſe names were thereunto ſubſcribed, being the major part of the inhabitants at that meeting aſſembled, That the ſeveral particulars of repairs, alterations, and erections, therein after mentioned, were neceſſary for the making the ſaid church as well more decent as more convenient for the inhabitants of the ſaid pariſh. By this reſolution, ſome of the particulars pointed out by the ſurveyors were rejected, and others altered, and the expence upon the whole greatly reduced.

Query. Are the inhabitants of *T*———— liable to enlargement, rebuilding if neceſſary, and ornaments, as well as repairs, more particularly, are they liable to any, and which of the articles in the reſolution of the 1ſt of *November* 1770?

Will they not be bound by the reſolution formed upon the eſtimate of their own ſurveyor?

Can they by dint of numbers out-vote the inhabitants of *T*— on any point really neceſſary, or how ſhould they proceed to get their church repaired?

Opinion. The inhabitants of *T*———— have by their agreement, made themſelves liable to the reparation of the church of *G*———— from time to time, as they heretofore have been, on account of being allowed to erect a chapel for their eaſe and convenience; and if they had not bound themſelves, they would have been obliged by law to contribute to all neceſſary repairs; for this general reaſon, becauſe it would be unjuſt that an eaſement granted to one part of the pariſh, by allowing them to have a chapel appropriated to themſelves, ſhould in any way become a burden to the other pariſh, without whoſe conſent, it is to be preſumed, the permiſſion of erecting a chapel would not have been originally obtained.—The reparation to which the inhabitants, having a chapel, are bound, extends not only to the fabric, and to every thing neceſſary to the preſervation of that fabric, but alſo to the repair or renewal of decayed pews, ancient ornaments, ſurplices, bibles, books of prayer, linen, *&c.* which may be properly required for the decent performance of divine ſervice; and ſuch reparation, if wanted, the ordinary, either on view or complaint, or both, may compel the churchwardens

to make by his own authority, even if the majority of a pariſh, in veſtry aſſembled, ſhould be of a contrary opinion. The rebuilding or enlargement of a church, or the erection of additional pews, can only be effected by a vote of the majority of the pariſhioners, aſſembled on proper notice in a legal veſtry. The inhabitants of a chapelry can no more be excluded from the veſtry of the mother church than from the church itſelf, if they chuſe to attend it; and whenever any buſineſs is to be tranſacted in which the chapelry-inhabitants have an intereſt, the chapel-wardens ought to have timely notice of the veſtry-meeting given them by the churchwardens, that the inhabitants of the chapelry may attend, if they think it neceſſary ſo to do: if they ſhould attend, and out-vote the inhabitants of the mother church, I think, that the minority could have no remedy in reſpect to rebuilding an extention of walls, or the erection of new pews upon new ſcites; but the ordinary, of his own authority, may order churchwardens to do all things which he finds neceſſary for the ſupport of the ancient fabric, and for the purpoſe of performing divine ſervice; and he has alſo power to enforce his orders on churchwardens, and to oblige them to make a rate to raiſe a ſum adequate to the repair wanted, upon all the pariſhioners; who may be compelled by eccleſiaſtical cenſures to pay their reſpective proportions towards that rate, unleſs any individual can prove himſelf to have been unequally aſſeſſed. If ſome of the inhabitants of *G*———, being joined by thoſe of *T*———, ſhould out-vote the reſt of the pariſhioners in every thing now propoſed, thoſe of the diſtrict of the mother church might nevertheleſs be relieved in reſpect to all repairs really and abſolutely neceſſary, by applying to the biſhop of *London*'s chancellor either to take a perſonal view, or to appoint ſurveyors to take a view for him, and report what is neceſſarily and immediately wanting for the ſupport of the church, and the decent performance of divine ſervice.—And as to the additional buildings and erections ſpecified in the eſtimate, there is no doubt but that a vote for them may hereafter be obtained in veſtry, (and of courſe a faculty) if the inhabitants of *G*——— are willing to take the expence upon themſelves, and will declare their intention of not aſſeſſing the inhabitants of the hamlet of *T*——— towards ſuch new work. But it will be time enough for the inhabitants of *T*——— to procure either of the methods by me propoſed, after they tried their ſucceſs at a general veſtry on due notice.—

In

In anſwer to the queſtion, Whether the inhabitants of T—— are liable to contribute to any of the articles recited in the reſolutions entered into on the 1ſt of *November*? I think, that if the inhabitants of the hamlet ſhould not come to the veſtry, or be out-voted, they cannot be obliged to pay for *additions*, and therefore they could only be compelled by a majority to contribute to new pews, where there were pews before, and of courſe to contribute towards part only of the third article, and towards the performance of the fifth, ſixth, ſeventh, eighth, tenth, and twelfth articles, and part of the ninth, and that on this account, in order to avoid confuſion, there ought to be two rates, the one for the repair of the old work only, with an aſſeſſment on all the pariſhioners; and the other for the new work, and the repairs occaſioned by that new work, with an aſſeſſment on the inhabitants only.

Doctors Commons.

April 18, 1772. *I. C.*

CASE.

In Chancery.

Salway v. *Philip's and others.*

Cater and others v. *Mayor of London and Salway.*

I Have read the briefs in theſe cauſes, and I think there is, upon the evidence taken alltogether, ſufficient foundation for the court to direct an iſſue to try, whether the defendant *P.* was a bankrupt on or before the 27th of *September*, 1757; and Mr. *S.* muſt either pray ſuch iſſue, or give up the point. How the evidence will turn out when the witneſſes are examined and croſs examined *viva voce* upon the trial, is a matter of which no certain judgment can be formed, and conſequently no opinion can be given as to the event of the iſſue. The coſts of the iſſue will depend on the verdict, and the verdict may draw after it the coſts of theſe ſuits; but that is not altogether ſo clear. I am of opinion the depoſition of the bankrupt may be read to prove the debts of the petitioning creditors, if he has obtained his certificate, and has executed a releaſe of his allowances out of his eſtate, by the act 5 *Geo.* 2. but I think his depoſition cannot be read to prove himſelf a bankrupt. The depoſition taken in one cauſe may be read in the other, upon motion and order for that purpoſe, but not without an order, as the corporation of *London* are defendants in both cauſes; the counſel for Mr. *S.* (who is plaintiff in the original cauſe) can't open their anſwer; I mention this, becauſe the brief in the croſs cauſe is marked *for the defendant.*

April 7, 1760. *R. A.*

SUMMER CIRCUIT.

1775.	Home.	Norfolk.	North.	Midland.	Weſt.	Oxford.
	L. Mansfield. L. C. B. Smythe.	L. C. J. De Grey. J. Willes.	J. Gould. J. Aſhurſt.	J. Aſton. J. Blackſtone.	J. Nares. B. Burland.	B. Eyre. B. Hotham.
Mon. July 24						Abingdon.
Tueſday 25				Northampton.	Wincheſter.	
Wedneſday 26						Oxford.
Friday 28				Okeham.		
Saturday 29			York & City.	Lincoln & City.	New Sarum.	Worc. & City.
Monday 31	Hertford.	Buckingham.				
Wed. Aug. 2	Chelmsford.					Glouc. & City.
Thurſday 3		Bedford.		Not. & Town.	Dorcheſter.	
Saturday 5		Huntingdon.		Derby.		Monmouth.
Monday 7	Maidſtone.	Cambridge.				
Tueſday 8			Durham.		Exeter & City.	Hereford.
Wedneſday 9				Leiceſter.		
Thurſday 10		Bury St. Edm.		Bor. Leic.		
Saturday 12			Newcaſtle.	Covent. & War.		Shrewsbury.
Monday 14	Lewes.	Norwich & C.			Bodmin.	
Wedneſday 16	Croydon.					
Thurſday 17						Stafford.
Friday 18			Carliſle.			
Monday 21					Wells	
Wedneſday 23			Appleby.			
Saturday 26			Lancaſter.			
Monday 28					Briſtol.	

CASE.

SOME time about the year 1680, ſeveral of the land-owners in the pariſh of *W.* purchaſed to them and their heirs, ALL the tithe of corn, grain, hay, flax, hemp, wool and lambs, and all other tithes whatſoever, as well great as ſmall; and all other *Eaſter*-rolls, payments and duties whatſoever; ariſing, growing, happening or increaſing, or to ariſe, grow, happen or increaſe, in or upon their ſeveral ancient freehold eſtates therein particularly ſpecified, and alſo in and upon the commons and waſte-grounds to the ſame reſpectively belonging. It is not known of whom theſe particular tithes were purchaſed, but 'tis ſuppoſed of ſomebody that was ſeized. And the conveyances of them ran much in the above form.

20 & 21 *Nov.* 1696. *D. M.* then ſeized of all the tithes not before ſold, by leaſe and releaſe, in conſideration of 200 *l.* conveyed to *I. B.* ALL that meſſuage in *W.* called the *New Hall*, *cum pert.* and all and ſingular the glebe lands, and all manner of tithes, obventions, oblations and hereditaments to the rectory of *W.* belonging, ariſing, happening, renewing or growing (except unto the ſaid *D. M.* and his heirs, ALL ſuch tithes, duties and offerings, belonging to the ſaid rectory, as are commonly called *Eaſter-roll* and *ſurplice fees*, and the preſentation and election of a miniſter or curate to the church of *W.* aforeſaid.) TO HOLD to ſaid *I. B.* his heirs and aſſigns for ever, under the yearly rent of 5 *l.* payable half-yearly to ſaid *D. M.* with a power of diſtreſs for recovery of the ſame. *D. M.* covenants that the premiſſes are free from incumbrances (except therein mentioned.)

I. B. who was grandfather to Mr. *T.* is dead, and he is now become ſeized of all the tithes conveyed to *I. B.* as above.

The pariſh of *W.* conſiſted of, till lately, ſeveral ancient houſes and incloſed lands, of ſeveral cottages, and about 600 acres of common or waſte ground, whereon the freeholders had right of common; but the ſoil was in the lord of the manor; and the freeholders being minded to have the commons incloſed, applied to the lord for his conſent; and a proportion of the cottages and commons was ſet out to him for his right, and the remainder divided among the freeholders, in proportion to their eſtates; and in the year ——, the commons were divided, and ſeveral freeholders in that year incloſed and improved their ſhares; and others then incloſed, but did not improve till a year or two afterwards.

Query. Is not Mr. *T.* under the conveyances made to Mr. *B.* as well entitled to the tithes of ſuch parts of the commons as were allotted to the other ſons who have purchaſed the tithes of their eſtates? And ſhould theſe tithes commence payable from ſeven years after the incloſure made, or from ſeven years after the firſt improvement, or when otherwiſe?

And as ſeveral freeholders refuſe to render him any tithes of ſuch part of the common as were ſet out to them in reſpect of the eſtates of which they have purchaſed the tithes, in what court and manner, is it beſt and moſt adviſeable for Mr. *T.* to proceed for the recovery of the ſame? Or muſt the landlords or tenants, or both, be made parties in ſuch ſuit?

Opinion. As the ſeveral purchaſers have purchaſed all the tithes ariſing upon their ſeveral farms, and particularly upon the commons and waſtes, I think that in equity, the waſte lands ſubſtituted in the place of the commons, ſhould not pay tithes for the profits of the commons, as commons are gone, and lands put in the place of them, ſo that it would be contrary to equity to make the purchaſers pay for the tithes of the commons a valuable conſideration, and yet to make them in effect pay all the tithes of the commons in kind to the impropriator; perhaps at law it may be otherwiſe, but of this I doubt. As to the other lands appropriated to the owners of the eſtates, they will, I think, be liable to tithes; but I think the ſeven years exemption ought to commence from the time of the improvement, and not from the time of the incloſure. The words of the act are, "That where lands ſhall be improved, they ſhall from thenceforth, after ſeven years after ſuch improvements, pay tithes;" So that the payment ſhould, I think, commence from the end of ſeven years after the improvements, and not after the incloſure.

September 28, 1751. *R. Wilbraham.*

CASE.

E. G. being ſeized in fee of a real eſtate, by indentures of leaſe and releaſe, dated on or about *September* laſt, grants and conveys the ſame to *A. E.* and his heirs, ſubject to a proviſo, to be void on payment of 1100 *l.* and intereſt at a certain day therein mentioned, which is yet to come; and having the right or equity of redemption to ſaid premiſſes, by his will, dated 13 *November*, 1758, expreſſes it to be his will and deſire, that all his juſt debts that he *ſhould owe* at the time of his deceaſe, ſhould be duly paid by his

executrix therein named, and then gives, deviſes and bequeaths all his real and perſonal eſtate, which was not then by any ſettlement or other writing ſettled upon his wife, and which he purchaſed ſince his intermarriage (except as therein mentioned) unto his wife *E.* her heirs, executors and adminiſtrators, for her to diſpoſe of as ſhe ſhould think proper, by any deed, will or other writing, ſubject to the payment of his debts as aforeſaid; and appoints his ſaid wife executrix, and ſoon after died.

Teſtator, at the time of his deceaſe, was indebted to ſeveral perſons upon bonds in ſeveral ſums, amounting to 2000 *l.* or upwards; and it is computed that his real and perſonal aſſets will not be ſufficient to ſatisfy the ſaid debt on mortgage and the ſaid bonds.

He alſo died indebted to ſeveral other perſons, to the amount of 600 *l.* or upwards, upon ſimple contracts.

Mrs. *G.* the executrix has renounced her right to the probate and execution of the ſaid will, and thereupon adminiſtration of the goods, chattels and credits of the teſtator, with the will annexed, was granted by the conſiſtorial court of the biſhop of *L.* and *C.* to his brother *I. G.*

Query. Whether the money ariſing by ſale of the teſtator's real eſtate, ought to be applied by the deviſee in diſcharge only of the teſtator's debts ariſing upon ſpecialties, in caſe ſuch debts ſhall exhauſt the whole; or whether, as equitable aſſets, it ought to be applied in diſcharge of the teſtator's debts in general, as well thoſe owing on ſimple contract as by ſpecialties, without preference to the ſpecialty creditors? Or will it be neceſſary for the deviſee to have the directions of a court of equity, as to the application of the money raiſed by ſale of ſaid eſtates?

Opinion. I am of opinion, that the ſpecialty debts are not to have preference of the ſimple contract debts, but all muſt be paid *pari paſſu:* at law, the deviſee of lands defeated the ſpecialty creditors, who would only charge the heir in reſpect of real aſſets deſcended to him, which deſcent was broke by the deviſe. The *ſtat.* 3 & 4 *W.* & *M.* indeed, has made ſuch deviſes in general fraudulent againſt the creditors, and given them an action againſt the heir and deviſee; but it ſtill allows deviſees for payment of debts, and the conveyance in that land ſo deviſed is become equitable aſſets, and muſt be diſtributed amongſt creditors of all ſorts, (except by judgment or mortgage) rateably and in proportion.

Lincoln's Inn, February 16, 1759. *Geo. Perrott.*

CASE.

E. G. being ſeized in fee of a real eſtate, by indentures of leaſe and releaſe, dated in or about *September* laſt, grants and conveys the ſame to *A. E.* and his heirs, ſubject to a proviſo to be void on payment of 1100 *l.* and intereſt at a certain day therein mentioned, which is yet to come; and having the right or equity of redemption to ſaid premiſſes, by his will dated 13 *November*, 1758, expreſſes it to be his will and deſire, that all his juſt debts that he ſhould owe at the time of his deceaſe, ſhould be duly paid by his executrix therein named, and then gives, deviſes and bequeaths, all his real and perſonal eſtate, which was not then by any ſettlement or other writing ſettled upon his wife, and which he purchaſed ſince his intermarriage (except as therein mentioned) unto his wife *E.* her heirs, executors and adminiſtrators, for her to diſpoſe of as ſhe ſhould think proper, by any deed, will or other writing, ſubject to the payment of his debts as aforeſaid; and appoints his ſaid wife executrix, and ſoon after died.

Teſtator at the time of his deceaſe, was indebted to ſeveral perſons upon bonds in ſeveral ſums amounting to 2000 *l.* or upwards, and it is computed, that his real and perſonal aſſets, will not be ſufficient to ſatisfy the ſaid debt on mortgage and the ſaid bonds.

He alſo died indebted to ſeveral other perſons, to the amount of 600 *l.* or upwards, upon ſimple contracts.

Mrs. *G.* the executrix has renounced her right to the probate and execution of the ſaid will, and thereupon adminiſtration of the goods, chattels and credits of the teſtator, with the will annexed, was granted by the conſiſtorial court of the biſhop of *L.* and *C.* to his brother *I. G.*

Query. Whether the money ariſing by ſale of the teſtator's real eſtate, ought to be applied by the deviſee in diſcharge only of the teſtator's debts owing upon ſpecialties, in caſe ſuch debts ſhall exhauſt the whole; or whether, as equitable aſſets, it ought to be applied in diſcharge of the teſtator's debts in general, as well thoſe owing on ſimple contract, as by ſpecialties, without preference to the ſpecialty creditors? Or will it be neceſſary for the deviſee to have the directions of a court of equity, as to the application of the money raiſed by ſale of ſaid eſtates?

Opinion.

Opinion. The bond creditors are entitled to a preference out of legal aſſets; but for the equitable aſſets, they ſhall be equal only with the ſimple contract creditors.

Lincoln's Inn, 16 *Feb.* 1759. *Stephen Gardiner.*

CASE.

G. M. being ſeized in fee, by will dated 19 *April*, 1755, deviſed to truſtees to the following uſes; *viz.*

Intereſt for his grandſon *G.* eldeſt ſon of his ſon *R.* in tail-male —Remainder.

Intereſt for *R.* ſecond ſon of his ſaid ſon *R.* in tail-male—Remainder.

Intereſt for the third, fourth, fifth, and all other ſons of his ſaid ſon *R.* in tail-male ſucceſſively—Remainder.

Intereſt for all and every the daughter and daughters of his ſons *R.* and *W.* as tenants in common—Remainder.

Intereſt for his ſaid ſon *R.* for his life—Remainder.

Intereſt for his ſaid ſon *W.* for his life—Remainder.

Intereſt for teſtators right heirs for ever.

Mich. term, 11 *Geo.* 3. 1770. A common recovery with double vouchers was ſuffered, wherein *C.* was demandant, *F.* tenant, and *R.* the teſtator's ſon, and *G.* his grandſon, vouchers of the eſtate ſo deviſed as aforeſaid.

R. the father of *G.* the tenant in tail is joined as voucher in the recovery, tho' he had nothing but an eſtate in remainder under his father's will, but ſaid *R.* did not join in the deed to make a tenant to the *precipe*.

Query. Is this recovery good, ſo as to have the iſſue of *G.* and all remainders over; and whether, upon the whole, it would not be prudential (if not abſolutely neceſſary) for a purchaſer to take a new recovery, wherein the tenant to the *precipe* ſhall vouch *G.* the tenant in tail alone, who ſhall vouch over the common vouchee in the uſual form? And may a purchaſer take a good title under the facts above ſtated?

Opinion.

Opinion. I think this recovery is good to cover all ſubſequent eſtates, to that of *G.* teſtator's grandſon, for *G.* would loſe his eſtate-tail, and the recompence in value would deſcend as the eſtate ought to have done. *R.* had nothing in the tail, but his remainder would barred merely by operation of law; and his being called upon, would, I conceive, be rejected, as nugatory and void. Notwithſtanding this, I would not be underſtood to recommend a title to a purchaſer, that poſſibly may afford foundation for litigation; and therefore, to remove every difficulty, it would be highly prudent to take a new recovery, which muſt, on account of the diſcontinuance, be with double vouchers in the manner abovementioned; that is, for the tenant to vouch *G.* alone, and *G.* the common vouchee; I obſerve nothing elſe to raiſe a doubt upon the title, if *G.* be unmarried, and his grandmother dead.

October 26, 1773. *T. Ley.*

CASE.

June 25, 1673. *I. K.* in conſideration of a marriage intended between *I. A* and *B.* and other conſiderations, ſettles a meſſuage and lands at *M*— in *Derbyſhire*, upon himſelf for life; then to ſaid *A.* for life, for her jointure, and after the deceaſe of the ſurvivor, to the uſe of the heirs male of the body of the ſaid *I.* upon ſaid *A.* lawfully begotten; on failure of ſuch iſſue, to the uſe of the ſaid *I. K.* his heirs and aſſigns for ever.

Auguſt 5, 1770. By indentures of feoffment executed by livery of *ſeiſin*, *I. K.* the father, and *I. K.* the ſon, for valuable conſiderations, conveyed the aforeſaid meſſuage and lands (without fine) unto *H. I.* and his heirs.

I. K. the father of *A.* his wife, and *I.* their ſon, have all been dead above twenty years; *I. K.* a grandſon is now living, and about thirty.

Query. As ſaid *H. I.* and *J.* his ſon have enjoyed the ſaid eſtate under the ſaid indenture of feoffment, upwards of forty years, without any claim or entry, is not the ſaid eſtate-tail thereby diſcontinued, and the grandſon barred by the ſtatute of limitations? And *I. T.* wanting to borrow money, may he not mortgage the ſame?

Opinion. I apprehend, *I. K.* the grandſon's right of intail under the ſettlement of 25th *June*, 1673, is not barred by the ſtatute of limitations, and notwithſtanding the long poſſeſſion of *H.* and *I. T.* the purchaſers, as the ſtatute of limitations can no ways affect a right till it accrues, and till neglected for the time limited, and as *I. K.* claims under an intail which would not take place till the death of the grandfather and grand-

grandmother, when, from the ſtate of this caſe, *I. K.* the grandſon was an infant and continued ſo ſeveral years after, his right ſeems yet preſerved by 2d *ſect.* of *ſtat.* 21 *Jac* 1. *c.* 16. whereby a ſpace of ten years after full age is allowed in caſe of infancy to preſerve ſuch right, which in this caſe does not appear to be fully expired.

Auguſt 31, 1741. *T. Coke.*

C A S E.

MR. *T.* Mr. *H.* and Mr. *G.* have agreed for the purchaſe of the *B*——— eſtate each of whom are to advance an equal ſhare of the purchaſe-money, and to have an equal ſhare of the eſtate.

Mr. *T.* is a widower, and Mr. *H.* and Mr. *G.* being both married, 'tis imagined if the ſaid eſtate is veſted in either of them by the conveyances, their wives will be entitled to their thirds, and that the parties will be put to the expence of levying fines in caſe they ſell off any part of the premiſſes.

Query. In what manner would you adviſe the eſtate to be conveyed to the purchaſers?

Opinion. I think the eſtate ſhould be conveyed to the three purchaſers and their heirs, as joint-tenants, and that they ſhould declare the truſt by a ſeparate deed, and thereby make themſelves tenants in common of the equitable eſtate. By this method, they will avoid giving a right of dower to their wives, and may ſell the eſtate, or any part of it, without a fine. When the purchaſers ſell any part of the eſtate, the conſideration money muſt be made payable to them by thirds; and being joint-tenants, muſt not covenant that they are all ſeized in fee; that covenant muſt be omitted, and they muſt covenant ſeparately, that they have a power to grant one third. They muſt either covenant jointly or each for a third, but not each ſeparately, and all three jointly for the whole.

September 16, 1754. *Eardley Wilmot.*

CASE.

C A S E.

THIS Indenture *tripartite*, made the ——— day of ——— in the ——— year of the reign of our Sovereign Lord *George* the third, by the grace of God, of *Great Britain*, *France* and *Ireland*, King, defender of the faith, *&c.* and in the year of our Lord ——— between *J. T.* of the parish of ———, otherwise ———, and late of the ——— cheesemonger, of the first part; *J. K.* and *R. T.* of, *&c.* churchwardens and overseers of the poor of the said parish of ———, otherwise ———, of the second part; and *W. M.* of ——— baker, and *J. H.* of the parish of ——— baker, of the third part. WHEREAS the said *J. T.* is seized of and intitled unto, for and during the term of his natural life, of and in one undivided moiety, of, in and unto certain copyhold premisses, situate, lying and being at ——— in the county of ———, which said undivided moiety is nevertheless subject to the payment of ——— pounds and interest, to *F. I.* late of the parish of ——— in the county of ——— spinster, descended by a certain mortgage. And the said *F. I.* was also in her life time seized to her and her heirs, of one other undivided moiety, of and in the said copyhold premisses. AND WHEREAS the said *F. I.* by her last will and testament, bearing date the ——— day of ———, in the year of our Lord ———, after some pecuniary and other legacies thereby given, and subject to the payment of her legacies, debts and funeral expences, did give, devise and bequeath, ALL her estate, both freehold and copyhold, to *H. H.* of ——— cheesemonger, to hold to him and his assigns upon this special trust, to sell and dispose of the same for the best price or prices that could be gotten, and by and out of the monies arising by the sale thereof, to pay and discharge her debts, legacies and funeral expences, if her personal estate should not be sufficient; and as to the rest and residue of the monies arising by such sale, to pay, apply and dispose thereof in such manner, and to such person or persons (except to the said *J. T.*) as her sister the wife of the said *J. T.* party to these presents, should by any deed or writing, notwithstanding her coverture, under her hand attested by two or more credible witnesses, direct or appoint the said *F. I.* declaring it to be her intention and will, that such residue should be for the sole and separate use of her said sister, and not subject or liable to the controul or debts of her said sister's said husband, and of her said will constituted and appointed the said *H. H.* sole executor, as in and by such will, relation to the same being had, may more fully and at large appear. AND WHEREAS the said *M. T.* by her writing under her hand, and attested by three credible witnesses, *that is to say*, *E. C. E. R.* and *B. R.* (the said writing being made *as and* for the last will and testament of the said *M. T.*) such

writing

writing reciting that her ſiſter the ſaid *F. I.* by the ſaid will herein before-mentioned, had deviſed all her eſtate, both freehold and copyhold, to her executor the ſaid *H. H.* to hold to him and his aſſigns upon the truſts in the ſaid will of the ſaid *F. I.* in that behalf herein before-mentioned, ſhe the ſaid *M. T.* in purſuance of the power veſted in her the ſaid *M. T.* in and by the ſaid laſt will and teſtament of the ſaid *F. I.* and ſo far as ſhe the ſaid *M. T.* might or could, did give, deviſe and bequeath unto the ſaid *W. M.* and *I. H.* their heirs and aſſigns for ever, ALL her the ſaid *M. T.*'s real, perſonal and copyhold eſtates, goods and chattels, plate and effects whatſoever, (except the ſeveral ſpecifick plate, rings and cloaths in the ſaid writing mentioned to be diſpoſed of by her the ſaid *M. T.*) *in truſt*, thereby and thereout in the firſt place to pay and diſcharge all her the ſaid *M. T.*'s juſt debts and funeral charges, by ſale and diſpoſal of all her perſonal eſtate; and after payment and ſatisfaction thereof, then to pay the rents, profits and produce of a moiety of a copyhold eſtate at *C*———— in the county of *H*———, (being the copyhold eſtate herein before mentioned) unto the ſaid *I. T.* her huſband, for and during the term of her natural life, and from and after his deceaſe, the ſaid *M. T.* by the ſaid writing, did order and direct the ſame eſtate to be ſold and diſpoſed of by the ſaid *W. M.* and *I. H.* (whom by the ſaid writing the ſaid *M. T.* appoints to be her executors) or by the ſurvivor of them, for the beſt price that could be got for the ſame; and by and with the monies ariſing therefrom, or by ſale of her perſonal eſtate, to lay out ſo much in government or other good ſecurities, as would raiſe and pay the ſum of 5 *l.* a year, clear of all incumbrances, which ſhe the ſaid *M. T.* by the ſaid writing, gave and bequeathed unto *I. M.* daughter of the ſaid *W. M.* her heirs and aſſigns for ever. AND after the payment of all and every her debts, funeral charges, and the legacies by her given, the ſaid *M. T.* did give the reſidue and remainder of her ſaid effects, unto *I. C.* and *M. M.* in the ſaid writing mentioned, and equally to be divided among them, ſhare and ſhare alike, as in and by the ſaid writing and appointment, remaining in the *Prerogative Court* of *Canterbury*, relation to the ſame being had, may more fully and at large appear; and the ſaid *M. T.* dying ſome time in or about the month of ———— now laſt paſt, thereupon, by virtue of the ſaid writing and appointment of the ſaid *M. T.* as alſo under the will of the ſaid *F. I.* they the ſaid *W. M.* and *J. H.* became entitled to ſuch eſtate, whether real or perſonal, which the ſaid *M. T.* excluſive of the ſaid *J. T.* her huſband, under the will of the ſaid *F. I.* had power to diſpoſe of; ſubject nevertheleſs to the ſeveral truſts and directions in the ſaid writing and appointment of the ſaid *M. T.* mentioned and directed; AND have taken upon them the execution of the ſaid truſt. AND whereas the ſaid *J. T.* under and by virtue of the ſaid writing or appointment of the ſaid *M. T.* (ſubject to the payment of the debts and

funeral charges of the said *M. T.*) by virtue of the trust declared in the said writing and appointment declared so entitled to the rents, profits and produce of the moiety of the copyhold estate in the said writing or appointment mentioned, for and during the term of his natural life. AND WHEREAS the said *J. T.* being legally settled in the said parish of *St. B*————, otherwise *B*————, was by God's permission visited and deprived of his senses, (which since by God's grace he has happily recovered) and during the time of his being so deprived of his senses, the churchwardens and overseers for the time being of the said parish of *St. B*————, otherwise *B*———, laid out not only for the support and maintenance of the said *J. T.* but likewise for the procuring him to be cured, several sums of money, amounting in the whole to the sums of ———, which has since been paid and satisfied to the churchwardens and overseers of the poor of the said parish, parties to these presents, by and from the said *J. T.* himself, in full satisfaction of what was so due to the said parish, on the account herein before-mentioned, of which said sum of ———— they the said churchwardens and overseers of the poor of the said parish, parties to these presents, do (being thereunto enabled by an order of vestry of the said parish, bearing date the ——— day of ——— now last) acquit and discharge the said *J. T.* and his estate; AND WHEREAS it may so happen, that the said *J. T.* may hereafter be chargeable to the said parish; *Now this indenture witnesseth*, That the said *J. T.* hath appointed, ordered and directed, and by these presents doth appoint, order and direct, that if at any time hereafter, the said *J. T.* should by any ways or means whatever become chargeable to the said parish, and the churchwardens and overseers of the poor of the said parish for the time being should lay out and expend for the support and maintenance of the said *J. T.* any sum or sums of money, during such time or times as the said *J. T.* shall happen to be so chargeable to the said parish, that in every such case and cases, they the said *W. M.* and *J. H.* and the survivor of them, and every other person or persons whatsoever, claiming by, from or under them, or the survivor of them, or any wife interested in the said moiety of the said copyhold estate, under and by virtue of the said writing and appointment of the said *M. T.* do, by and out of the rents, profits and produce of the moiety of the said copyhold estate, and so far as the same will, would pay unto the churchwardens and overseers of the poor of the said parish for the time being, all such sum and sums of money as the said churchwardens and overseers of the poor of the said parish for the time being shall lay out and expend for the support and maintenance of the said *J. T.* during such time or times as he the said *J. T.* shall so happen to be chargeable to the said parish, the residue of the rents, profits and produce of the moiety of the said copyhold estate, to be paid to such person or persons, as under the said *J. T.* would be entitled to the same; *provided* always, nevertheless,

nevertheleſs, and it is agreed by and between the ſaid parties to theſe preſents, that until the ſaid *J. T.* ſhall become chargeable to the ſaid pariſh, that they the ſaid *W. M.* and *J. H.* and the ſurvivor of them, ſhall and will from time to time, well and truly pay, or cauſe to be paid to the ſaid *J. T.* or his aſſigns, the clear rents and profits of the ſaid moiety of the ſaid copyhold eſtate, for and during the term of his natural life. AND they the ſaid *W. M.* and *J. H.* for themſelves ſeverally and reſpectively, and not the one for the other, and for their ſeveral and reſpective executors and adminiſtrators, and not for the executors or adminiſtrators of the other of them, do covenant, promiſe and agree, to and with the ſaid churchwardens and overſeers of the poor of the ſaid pariſh, parties to theſe preſents, and to and with each and every of them, and to and with their, each and every of their executors and adminiſtrators, that in caſe the ſaid *J. T.* ſhall at any time hereafter by any ways or means whatever become chargeable to the ſaid pariſh, and that the churchwardens and overſeers of the poor of the ſaid pariſh for the time being ſhall lay out and expend for the maintenance and ſupport of the ſaid *J. T.* any ſum or ſums of money, during ſuch time or times as the ſaid *J. T.* ſhall happen to be ſo chargeable to the ſaid pariſh, that then the ſaid *W. M.* and *J. H.* or one of them, ſhall and will from time to time, by and out of the rents, and profits of the ſaid moiety of the ſaid copyhold premiſſes, and ſo far as the ſame ſhall clearly amount unto and extend, repay unto the churchwardens and overſeers of the poor of the ſaid pariſh for the time being, for the uſe and benefit of the ſaid pariſh, all and every ſuch ſum and ſums of money as the churchwardens and overſeers of the poor of the ſaid pariſh, ſhall have at any time laid out and expended for the maintenance and ſupport of the ſaid *J. T.* during ſuch time or times as the ſaid *J. T.* ſhall have happened to be ſo chargeable to the ſaid pariſh. AND the ſaid *W. M.* and *J. H.* do alſo for themſelves ſeverally and reſpectively, and not the one for the other, and for their ſeveral and reſpective executors and adminiſtrators, and not for the executors or adminiſtrators of the other of them, do by theſe preſents covenant, promiſe and agree, to and with the ſaid *J. T.* his executors, adminiſtrators or aſſigns, that they the ſaid *W. M.* and *J. H.* or one of them, ſhall and will from time to time pay, or cauſe to be paid, to the ſaid *J. T.* and his aſſigns, for and during the term of his natural life, the clear rents and profits of the ſaid moiety of the ſaid copyhold premiſſes which ſhall accrue and be paid, and payable at any time after the feaſt day of *St. Michael* the *archangel* laſt paſt, and before the ſaid *J. T.*'s becoming chargeable to the ſaid pariſh. *Provided* always, nevertheleſs, and it is agreed by and between the parties to theſe preſents, that it ſhall and may be lawful in the firſt place, for the ſaid *W. M.* and *J. H.* and for the ſurvivor of them, to retain and take to him and themſelves all and every ſuch coſts and charges as they or any of them ſhall have neceſſarily laid out and expended

in and about the execution of the truſt repoſed in them as aforeſaid; any thing in theſe preſents contained to the contrary thereof in anywiſe notwithſtanding. AND they the ſaid *J. K.* and *R. T.* parties to theſe preſents, churchwardens and overſeers of the poor of the ſaid pariſh, by virtue of, and in purſuance of the ſaid order of veſtry, for themſelves and their ſucceſſors, do by theſe preſents covenant, promiſe and agree, to ſave and bear harmleſs, and keep indemnified, the ſaid *W. M.* and *J. H.* and each of them, their and each of their executors and adminiſtrators, and their and each of their goods and chattels, lands and tenements, of, from and againſt all and all manner of coſts, charges, damages and expences, which they or any of them ſhall or may be obliged to pay, lay out, be put unto or ſuſtain, not only by or on account of, by reaſon or means of any payment to be made of the rents and profits of the moiety of the ſaid copyhold premiſſes as by virtue of theſe preſents, but alſo for or by reaſon of the ſaid *W. M.* and *J. H.* or of either of them, having already and before the execution hereof, delivered over to the ſaid *J. T.* and the churchwardens and overſeers of the poor of the pariſh, or ſome or one of them, for or in truſt for the ſaid *J. T.* any goods or chattels claimed or reputed to be the ſeparate eſtate of the ſaid *M. T.* and *J. T.* or either of them; AND the ſaid *J. T.* in conſideration of theſe preſents, doth by theſe preſents remiſe, releaſe, and for ever quit claim unto them the ſaid *W. M.* and *J. H.* and to each of them, all and all manner of action and actions, cauſe and cauſes of action, claim and demand whatſoever, which he the ſaid *J. T.* now hath againſt them the ſaid *W. M.* and *J. H.* or againſt either of them, for or in reſpect, or by reaſon or means of them the ſaid *W. M.* and *J. H.* having poſſeſſed him or themſelves of any goods and chattels whatſoever, which were in the poſſeſſion of the ſaid *M. T.* at the time of her death, and for or by reaſon, means or occaſion of any other cauſe, matter or thing whatſoever, to the day of the date of theſe preſents. IN WITNESS, *&c.*

Query. Are the executors of *M. T.* juſtified in entering into this deed, under the power and authority given them by the will of the ſaid *M. T.*? If ſo, are they ſufficiently indemnified by the proviſionary covenants entered into on their behalf by the churchwardens and overſeers of the pariſh of *St. B*——— and the ſaid *J. T.*?

Opinion. As this act of the executors, ſeems ſolely calculated for the benefit of *J. T.* and it being the apparent intention of the teſtatrix *M. T.* to make a proviſion out of her copyhold eſtate for the ſaid *J. T.* during his life, I think, were the executors called on for the ſtep they have taken, a court of equity would juſtify them therein.

Lincoln's Inn, Oct. 23, 1754. *E. H.*

CASE.

CASE.

THIS Indenture, made the ——— day of ———, in the ——— year of the reign of our ſovereign lord *George* the ſecond, by the grace of God, of *Great Britain*, *France* and *Ireland*, King, defender of the faith, and ſo forth; and in the year of our Lord God ———, between *H. W.* in the county of ——— Eſq; (firſt ſon of the body of *H. R. W.* late of ——— aforeſaid, but formerly of ——— in the county of ——— Eſq; deceaſed, on the body of *A.* formerly *A. C.*) his late wife alſo deceaſed begotten) of the one part, and *R. F.* of ——— in the county of ——— in the county of ——— gentlemen, of the other part: *Witneſſeth* that the ſaid *H. W.* for and in conſideration of the ſum of ——— of lawful money of *Great Britain*, to him in hand paid by the ſaid *R. F.* at or before the enſealing and delivery of theſe preſents, the receipt whereof is hereby acknowledged, hath bargained and ſold, and by theſe preſents doth bargain and ſell unto the ſaid *R. F.* ALL that the manor *(here recite the parcels) To have and to hold* the ſaid manor or lordſhip, or reputed manor or lordſhip, and all and every the meſſuages, farms, lands, tenements, hereditaments and other the premiſſes hereby bargained and ſold, or mentioned, or intended to be hereby bargained and ſold unto the ſaid *R. F.* his executors, adminiſtrators and aſſigns, from the day next before the day of the date of theſe preſents, for and during and unto the full end and term of one whole year from thence next enſuing, and fully to be compleat and ended, *yielding and paying* therefrom unto the ſaid *H. W.* his heirs and aſſigns, the rent of one pepper-corn only, on the laſt day of the ſaid term, if the ſame ſhall be lawfully demanded, to the intent and purpoſe that by virtue of theſe preſents and of the ſtatute for transferring of uſes into poſſeſſion, the ſaid *R. F.* may be in the actual poſſeſſion of all and ſingular the ſaid hereby bargained and ſold premiſſes, with the appurtenances, and may thereby be enabled to take a grant or releaſe of the reverſion and inheritance thereof to him and his heirs in ſuch manner, and for ſuch uſes intents and purpoſes, as by the ſaid ——— writing doth in, tend to grant or releaſe the ſame by one indenture to bear date the day next before the day of the date of theſe preſents. IN WITNESS, &c.

Sealed, &c.

CASE.

THIS Indenture *tripartite*, made the ——— day of ———, in the ——— year of the reign of Sovereign Lord *George* the ſecond, by the grace of God King of *Great Britain*, &c. and in the year of our Lord ———, between *H. W.* of ——— in the county of ——— Eſq; (firſt ſon of the body of *H. R. W.* late of ——— aforeſaid, but formerly of ——— in the county of ——— Eſq; deceaſed on the body of *A.*) formerly *A. C.* (his late wife, alſo deceaſed begotten) of the firſt, *R. F.* of ——— in the county of —— gent. of the ſecond part, and *R. C.* of the —— in the pariſh of ——— in the county of ——— Eſq; of the third part; *Witneſſeth*, That for the barring and docking all eſtates-tail, reverſions and remainders, of and in the ſeveral manors, farms, meſſuages, lands, tenements, hereditaments, and other the premiſſes herein after mentioned, with the appurtenances, and for ſetting and aſſuring the ſame premiſſes with the appurtenances, to and for ſuch uſes, intents and purpoſes, as are herein after limitted and declared, of and concerning the ſame; AND in conſideration of ——— of lawful *Britiſh* money to the ſaid *H. W.* in hand paid by the ſaid *R. F.* at or before the ſealing and delivery of theſe preſents, the receipt whereof is hereby acknowledged, and for other good cauſes, he the ſaid *H. W.* hath granted, bargained, ſold, releaſed and confirmed, and by theſe preſents doth grant, bargain, ſell, releaſe and confirm unto the ſaid *R. F.* and his heirs, (in his actual poſſeſſion now being, by virtue of a bargain and ſale to him thereof, made by the ſaid *H. W.* by indenture bearing date the day next before the day of the date of theſe preſents, for the term of ——— commencing from the day next before the day of the date of the ſame indenture, and by force of the ſtatute for transferring of uſes into poſſeſſion) ALL that the manor or lordſhip of ——, and all that the manſion or manor-houſe of —— with the lands, tenements, and hereditaments thereunto belonging, heretofore in the tenure or occupation of *W. M.* his aſſignees or aſſigns, under tenant or undertenants, but now in the occupation of the ſaid *H. W.* and of *J. B.* *A. H.* widow, *M. B. S. M.* and *D. D.* as his tenants, or of ſome or one of them, their, ſome or one of their undertenants or undertenants; and alſo all that farm called ——— with the lands, tenements and hereditaments thereunto belonging, formerly in the tenure or occupation of *M. P.* his aſſignees or aſſigns, or undertenant or undertenants, but now in the occupation of *J. C.* his undertenant or undertenants; AND alſo all that farm called or known b the name of ———, with the lands, tenements and hereditament thereunto belonging, formerly in the tenure or occupation of *D. F*

aſſignee or aſſigns, undertenant or undertenants, but now in the occupation of the ſaid *J. B.* his undertenant or undertenants; AND all thoſe coppice-woods, ſituate, lying and and being in ——— and —— aforeſaid, in the ſaid county of ——, containing by eſtimation —— acres, heretofore in the tenure or occupation of *H. W.* (grandfather of the ſaid *H. W.* party, but now of the ſaid *H. W.* party hereto, and of *J. B.* gent. or one of them hereto) his undertenant or undertenants. AND alſo all that meſſuage or tenement, and lands thereto belonging with the appurtenances, called or known by the name of —— ſituate and lying in the ſeveral pariſhes of —— and ———, or one of them in the ſaid county of ———, formerly in the tenure of *J. S.* and late in the ſeveral tenures or occupations of *T. G. J. D.* and *J. W.* their aſſignee or aſſigns, under-tenant or under-tenants; and alſo all thoſe ſeveral coppice-woods herein after mentioned, (that is to ſay) ALL that coppice-wood or wood-land, called or known by the name of the ———, containing by eſtimation ——— acres ——— rood and ——— perches; and alſo all that coppice-wood or wood-land, called or known by the name of ———, containing by eſtimation —— acres —— roods and —— perches; and alſo all that coppice-wood or wood-land called or known by the name of ———, containing by eſtimation —— acre ——— roods and ——— perches; and alſo all that coppice-wood or wood-land called or known by the name of ———, containing by eſtimation —— acres, —— rood, and ——— perches; and alſo all that coppice-wood or wood land, called or known by the name of ——, containing by eſtimation —— acres, —— rood, and —— perches; and alſo all that coppice-wood or woodland, called or known by the name of the ———, containing by eſtimation —— acres and —— perches, which ſaid laſt mentioned meſſuage, coppices and woodlands, are ſituate, lying and being in the ſeveral pariſhes of ——— and ——— in the county of —— aforeſaid; and all other the meſſuages, lands, tenements and hereditaments which in and by certain indentures of leaſe and releaſe, bearing date reſpectively the ——— and ——— days of ——— in the year of our Lord ———, purchaſed in fee by the ſaid *H. R. W.* of and from the moſt noble *J.* duke of ——— ; ALL which ſaid manor and premiſſes are ſituate, lying and being in the ſeveral pariſhes of ———, ———, ——, and —— or ſome or one of them in the ſaid county of ———; and alſo all and every other the meſſuages, farms, lands, tenements and hereditaments whatſoever, whereof or wherein the ſaid *H. W.* party hereto, or any other perſon or perſons, *in truſt* for him, now hath any eſtate or inheritance in poſſeſſion, reverſion, remainder or expectancy, ſituate, lying or being within the ſaid ſeveral pariſhes of —— and ——, ———, ——— and ———, or any or either of them, in the ſaid county of ———; and all and every the houſes, mills, edifices, buildings, barns, ſtables, dove-houſes, warrens, courts, yards, gardens, orchards, lands, arable, meadow, paſture and wood-grounds,

feedings, commons, and common of paſture, mines, quarries, courts-leet and courts-baron, perquiſites and profits of courts, goods and chattels of felons, and fugitives, waifs, eſtrays, rents, reverſions, ſervices, royalties, juriſdictions, immunities, profits, comoditions, advantages, emoluments, hereditaments and appurtenances whatſoever, the ſaid manor or lordſhip, or reputed manor or lordſhip, meſſuages, farms, lands, tenements, hereditaments and premiſſes, every or any of them belonging or in any wiſe appertaining or with them, any either of them, letten, uſed, occupied or enjoyed, or accepted, reputed, had or taken as part, parcel or member thereof, or of any part thereof; AND the reverſion and reverſions, remainder and remainders, rents and ſervices thereof, and all the eſtate, right, title, intereſt, uſe, truſt, poſſeſſion, property, claim and demand whatſoever, of him the ſaid *H. W.* of, in and to the ſaid hereby releaſed premiſſes, every or any part thereof, with their and every of their rights, members and appurtenance, *To have and to hold* the ſaid manor or lordſhip, or reputed manor or lordſhip, and all and every the meſſuages, farms, lands, tenements, hereditaments and other the premiſſes herein before granted and releaſed, or mentioned or intended ſo to be, with their and every of their appurtenances, unto the ſaid *R. F.* his heirs and aſſigns, to the only uſe and behoof of the ſaid *R. F.* his heirs and aſſigns for ever, to the intent and purpoſe nevertheleſs, that by virtue of the ſaid indenture of bargain and ſale, and of theſe preſents, he the ſaid *R. F.* may be, and become a good and perfect tenant of the immediate freehold and inheritance of the ſaid manor or lordſhip, or reputed manor or lordſhip, and all and ſingular other the ſaid hereby releaſed premiſſes, with their rights, members and appurtenances, in order that a common recovery may thereof be had, executed and perfected, according to the uſual courſe of common recoveries for aſſurance of lands; for which purpoſe it is hereby covenanted, concluded and mutually agreed, by and between all and every the parties to theſe preſents, that on this ſide and before the end of ———, next enſuing the day of the date of theſe preſents, at the proper coſts and charges of the ſaid *H. W.* (party hereto) one or more writ or writs of entry *ſur diſſeizin en le poſt*, ſhall or may be brought, commenced and proſecuted, returnable before his Majeſty's Juſtices of the court of ——— at ———, in the name of the ſaid *R. C.* as plaintiff or demandant, againſt the ſaid *R. F.* whereby the ſaid *R. C.* ſhall demand againſt the ſaid *R. F.* the ſaid manor or lordſhip, or reputed manor or lordſhip, and all and every the meſſuages, farms, lands, tenements, hereditaments, and other the premiſſes herein before granted and releaſed, or mentioned, or intended ſo to be, with their and every of their rights, members and appurtenances, by the name or names of the manor of ——— with the appurtenances, and ſeven meſſuages, three toſts, three corn-mills, fifteen gardens, eight hundred forty acres of land, one hundred and fifty acres of meadow, one hundred and forty acres of paſture, two hundred and twenty

twenty acres of wood, one hundred acres of furze and heath, ſixty acres of marſhland, a rent of ——— and common of paſture for all cattle with the appurtenances, in the pariſhes of ———; ——— ———, ——— and ———, in the county of ———, or by ſuch other apt and convenient name or names, quantities, qualities, deſcriptions and particulars, as ſhall effectually comprize the ſame, or in that behalf be thought fit and requiſite; to which writ or writs the ſaid *R. F.* ſhall appear *gratis*, in his own proper perſon, or by his attorney or attornies in that behalf lawfully authorized, and ſhall vouch, or call to warrant the ſame premiſſes, the ſaid *H. W.* party hereto, who ſhall alſo appear *gratis* in his own proper perſon, or by his attorney or attornies in that behalf lawfully authorized, and ſhall enter into the ſaid warranty, and vouch over or call to warrant the ſame premiſſes the common vouchee, who ſhall thereupon appear and enter into the ſaid warranty, and after imparlance, make default, and ſuch further or other proceedings ſhall be had upon the ſaid writ or writs, and all the parties ſhall ſo demean themſelves therein, that a good and perfect common recovery, with double voucher to be executed by writ of *habere facias ſeizinam* ſhall or may be had, ſuffered, executed and perfected, of, for and upon the ſaid manor or lordſhip, or reputed manor or lordſhip, and all and ſingular other the ſaid hereby releaſed premiſſes with the appurtenances, in all things according to the uſual courſe, order and form of common recoveries, with double voucher for aſſurance of land in ſuch caſes uſed. AND laſtly, it is hereby covenanted, concluded, declared and fully agreed, by and between all and every the parties to theſe preſents, for them and their heirs, and it is their true intent and meaning, that the ſaid common recovery ſo as aforeſaid, or at any other time, or in any other manner to be had, ſuffered or executed of, for or upon the ſaid manor or lordſhip, or reputed manor or lordſhip, and all and every the ſaid hereby releaſed premiſſes, or any part thereof, and the full force, effect and execution thereof; and alſo all and every other common recovery and recoveries, fine and fines, and other aſſurances had, made, levied, ſuffered or executed, of, for or upon the ſame premiſſes, or any part thereof, to which the ſaid parties to theſe preſents, any or either of them, have or hath been, is, are or ſhall be party or parties, privy or privies, ſhall be and enure, and ſhall be conſtrued, deemed, expounded, adjudged and taken, to be and to enure, to and for the only uſe and behoof of the ſaid *H. W.* party hereto, his heirs and aſſigns for ever; and to or for no other uſe, intent or purpoſe whatſoever. IN WITNESS, *&c.*

Sealed, &c.

You are deſired to peruſe and ſettle the draught, leaſe and releaſe to lead the uſes of a recovery received herewith, and to adviſe whether the recovery intended to be paſſed by virtue of the covenant therein, will ſufficiently bar and dock the intail, ſo as to veſt the eſtate thereby bargained and ſold in the ſaid *H. W.* his heirs and aſſigns for ever.

Opinion.

Opinion. I have perused and settled these draughts, and am of opinion, that the same (as they now stand) will effectually bar the intail, and settle the estates conveyed to the said *H. W.* by the said lease and release, in him, his heirs and assigns for ever, provided the recovery intended to be passed, is duly suffered according to the modes and forms used and established in law.

May 24, 1756. *W. Rivet.*

CASE.

April 2, 1724. BY *Indenture* of this date, Mrs. *T.* in consideration of a marriage then intended to be had and solemnized between her nephew Mr. *L.* and Miss *D.* assigned over to trustees the sum of 1000 *l.* which was then due and owing to her from one *R. R.* Esq; on bond and judgment, together with the securities for the same; *In trust*, for them to pay her the interest thereof during her life, and after her decease, *in trust*, to pay the interest thereof to Mr. *L.* her intended husband during his life, and after the decease of the survivor of them the said Miss *D.* and Mr. *L.* provided the said marriage took effect, *in trust* to pay the said principal sum of 1000*l.* to and among all and every the child or children of the said intended marriage in such shares and proportions, as they the said Miss *D.* and Mr. *L.* (if the said marriage took effect) or the survivor of them should by deed or will direct or appoint, and in default of such direction or appointment, *then* the said principal sum of 1000 *l.* was to be equally divided to and among the issue of the said marriage, share and share alike, and in default of such issue (but it was not mentioned in such settlement, that in default of such issue living at the death of the said Mr. and Mrs. *L.*) the said 1000 *l.* principal money was to be paid to the executors, administrators or assigns of the said Mr. *D.*

Note. Miss *S.* has been long since deceased.

The said marriage took effect, and Mr. *L.* had issue by the said marriage only one daughter, who afterwards intermarried with one *J. H.* Esq; and then died (in the life-time of the said father Mr. *L.*) without issue.

The said Mr. *L.* is since dead, but previous to his death, which happened in the year 1734, (and since the death of the said Mrs. *H.* his daughter) sold the reversion of the said 1000 *l.* principal money, to his said wife Mrs. *L.* (they being at that time under articles of separation) and her assigns, that she might have the power at her decease

deceaſe of bequeathing the ſaid 1000 *l.* as ſhe thought proper. The ſaid Mr. *L.* alſo made a will, *&c.* (notwithſtanding the articles of ſeparation) and diſpoſed of all his effects to his ſaid wife Mrs. *L.* and her heirs, leaving her the ſaid Mrs. *L.* ſole executrix.

Quere. Had Mr. *L.* a power to diſpoſe of the remainder of the ſaid 1000 *l.* or any part thereof, (being ſo firmly ſettled on the iſſue of that marriage by the marriage ſettlement) to his wife Mrs. *L.* and her aſſigns, for ever.

Will not Mr. *K.* the huſband of the late Miſs *L.* or his repreſentatives after the deceaſe of the ſaid Mrs. *L.* by taking out letters of adminiſtration to his ſaid late wife, or how otherwiſe be entitled to receive the ſaid principal ſum of 1000 *l.* provided the ſaid Mrs. *L.* ſhould be inclined to diſpoſe of the ſame elſewhere at her death, or ſhould ſhe chance to die without making any diſpoſition of the ſame.

Opinion. I am of opinion that Mrs. *L.* is entitled to the intereſt of the ſaid ſum of 1000 *l.* for her life, and that after her death the ſame will belong to Mr. *K.* (if he ſhall be then living) or to ſuch perſon or perſons as he ſhall aſſign the ſame to, and in default of ſuch aſſignment, to his executors or adminiſtrators. As Mr. and Mrs. *L.* had a daughter, the reverſionary intereſt was veſted in her, and tho' ſhe died in the life-time of her father and mother, yet her repreſentative (who is her huſband) by taking out adminiſtration to her, will have an undoubted right of diſpoſing of the ſame. His death in the life-time of Mrs. *L.* will not make any difference.

Lincoln's Inn. *Mat. Duane.*

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